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HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 401

BOARD OF SUPERVISORS OF MONROE COUNTY, MISSISSIPPI, *PETITIONERS,*

VS.

ALLEN A. WALKER ET ALS.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

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VS.

ALLEN A. WALKER ET ALS.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

The Board of Supervisors of Monroe County, Mississippi, your petitioners, pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Mississippi, entered in the above entitled case on June 13, 1955.

OPINION BELOW.

The opinion of the Supreme Court of Mississippi, (*infra;* Appendix A, pp. A1-A21) is not yet reported.

JURISDICTION.

1. The judgment of the Supreme Court of the State of Mississippi was entered on June 13, 1955.

2. A Suggestion of Error was overruled by the Mississippi Supreme Court on July 15, 1955 (*infra*, Appendix B, p. A22).

3. The jurisdiction of this Court is invoked under the provisions of 28 U. S. C., Sec. 1257 (3).

QUESTIONS PRESENTED.

The questions presented for review are:

1. Whether or not a state legislature may impose an excise tax for local improvements on a particular county or locality in conformity with the Fourteenth Amendment to the Federal Constitution.

2. Whether or not the Supreme Court of Mississippi committed error in deciding a federal question of substance, to-wit, that the imposition of a gasoline excise tax on Monroe County, Mississippi, for local improvements for roads and bridges violated the equal protection clause of the Fourteenth Amendment to the Federal Constitution.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

The Mississippi statute involved is Senate Bill 1756, Laws of Mississippi, 1954, which is set forth in Appendix C, pp. A23-A28).

The Fourteenth Amendment to the Federal Constitution is set forth in Appendix C, p. A29.

STATEMENT.

At its regular session in 1954, the Mississippi Legislature enacted Senate Bill 1756 which authorized the Board of Supervisors of Monroe County, Mississippi, petitioners herein, to issue not exceeding $500,000.00 of road and bridge bonds of the County to build roads and bridges of the County. Such bonds were to be secured by the full faith and credit of Monroe County and, in addition, the Board of Supervisors of the County were authorized to levy not exceeding an additional one cent per gallon gasoline excise tax levy upon all gasoline sold in the county. The proceeds from the additional gasoline excise tax levy were to be applied to the payment of the bonds.

Pursuant to the authority granted in said Senate Bill 1756, the Board of Supervisors of Monroe County, Mississippi, gave notice of its intention to issue the road and bridge bonds of the county in the amount of $498,600.00. When a protest to the issuance of such bonds was filed by more than 20 per cent of the qualified electors of the County an election on the question of the issuance of such bonds was called and held in accordance with law. The election carried in favor of the issuance of the bonds.

Whereupon, the bonds were issued and, in accordance with Mississippi law, proceedings were instituted in the Chancery Court of Monroe County to validate the bonds. At the validation hearing, a protest in writing was filed by Allen A. Walker *et als.*, respondents herein, to the validation of the bonds.

A full hearing thereon was held by the Chancery Court of Monroe County, Mississippi, as to the legality and constitutionality of the bonds. The said Chancery Court

entered a decree validating such bonds and holding them to be constitutional obligations of the county.

An appeal was perfected by the objectors to the bonds and the case was heard by the Mississippi Supreme Court. That Court reversed the decision of the lower court and held that the bonds were invalid and unconstitutional. The Mississippi Supreme Court held that Senate Bill 1756, of the Mississippi Laws of 1954, under which the bonds were issued, violated the Mississippi Constitution of 1890 and more especially the equal protection clause of the Fourteenth Amendment to the Federal Constitution.

Upon application of the petitioners herein, the mandate of the Supreme Court of Mississippi has been stayed pending application to this Court on the Writ of Certiorari.

HOW THE FEDERAL QUESTION WAS RAISED.

The Federal question was raised herein by the objectors to the bonds in the court below by Par. IV of their protest (R. 127; *infra*, Appendix D, p. A30), and by Par. XIX of their protest (R. 139; *infra*, Appendix D, p. A30), and by Par. XXVI of their protest (R. 148; *infra*, Appendix D, p. A31).

REASONS FOR GRANTING THE WRIT.

The Supreme Court of the State of Mississippi denies the power of the legislature to enact a local and public law for local benefit, and to levy a tax on the sale of gasoline in the county to pay off bonds to be issued to pay for said local improvement.

The instant controversy arose as a result of Senate Bill 1756, Laws of Mississippi, 1954, which provided for issuance

of county bonds to finance local road and bridge improvements in Monroe County, Mississippi. The act authorized the Board of Supervisors of the county to levy a gasoline excise tax of 1 cent per gallon on all gasoline sold in Monroe County to pay off the bonds. The Supreme Court of the State of Mississippi held that such act violates the equal protection clause of the Fourteenth Amendment to the Federal Constitution. The opinion of the State court completely ignored the fact that such act provided for local improvements and for a local tax on the persons benefited by this improvement. The court dealt with the question as if the law had been enacted to place a tax on the people of one county to produce revenue for the general fund of the state. The rule has long been well settled, and has never been seriously controverted, that the legislature of the various states may levy a tax on persons benefited for local improvements and it is not open to criticism under the Fourteenth Amendment so long as none of the people within the geographical area to which the tax is applied are arbitrarily discriminated against; and further that any person seeking relief under the equal protection clause of the Federal Constitution must show that he has been the object of arbitrary discrimination. *Miles* v. *Dept. of Treasury*, 1935, 199 N. E. 372, 209 Ind. 172, 101 A. L. R. 1359, superceding opinion 193 N. E. 855, 97 A. L. R. 1474, appeal dismissed, *Miles* v. *Dept. of Treasury of State of Indiana*, 1936, 298 U. S. 640; *Bollinger* v. *Watson*, 1933, 63 S. W. 2d 642, 187 Ark. 1044; *Roberts* v. *Richland Irrigation District*, 1933, 289 U. S. 71, affirming 13 P. 2d 437, 169 Wash. 156.

In 51 Am. Jur., Taxation, Sec. 168, Page 224, it is stated:

> "It appears to be of little importance in the application of the equal protection clause to state legislation whether the particular tax involved is a property tax

or an excise tax." *Louisville Gas & E. Co.* v. *Coleman*, 277 U. S. 32, 72 L. Ed. 770, 48 S. Ct. 423.

Bollinger v. *Watson, supra,* involved a law in Arkansas that the tax on gasoline be 6 cents per gallon except in border towns where it shall be no more than the tax in the adjoining state. The Court said:

> "The legislation here involved affects equally all of those residing in the border towns according to the tax prescribed by the state upon which they border. These constitute one class, and the act operates uniformly in all other sections of the state, and this constitutes another and different class."

The rule is stated in 12 Am. Jur., page 167, Constitutional Law, Section 448, as follows:

> "The rule is well settled that the constitution of the United States in securing the equal protection of the laws does not prohibit legislation which is limited as to the territory within which it is to operate. In the absence of restrictions contained in state Constitutions the legislature may determine within broad limits whether particular laws shall extend to the whole state or be limited in their operation to particular portions of the state. All that the Federal Constitution requires is that they shall be general in their application within the territory in which they operate." *Ft. Smith Light & Traction Co.* v. *Board of Improvement,* 274 U. S. 387, 71 L. Ed. 1112, 47 S. Ct. 595; *Toyota* v. *Hawaii,* 226 U. S. 184, 57 L. Ed. 180, 33 S. Ct. 47; *Brown* v. *New Jersey,* 175 U. S. 172, 44 L. Ed. 119, 20 S. Ct. 77; *Hayes* v. *Missouri,* 120 U. S. 68, 30 L. Ed. 578, 7 S. Ct. 350.

There was no discrimination shown whatever in the case at bar, and there was no offer of proof to show discrimination or the unequal protection of the law. There was only the bare assertion contained in the respondents' protest that they were being discriminated against.

This court held in the case of *Memphis & Charleston Railway Co.* v. *Pace,* 1931, 212 U. S. 241, affirming 121 So. 826, 154 Miss. 536, that where the state legislature had created a special road district by a local and private law and levied a tax on the property in the district, the law was not violative of the equal protection clause of the Fourteenth Amendment, stating:

> "The construction and maintenance of serviceable roads in any community is a matter in which the whole community has an interest and is a typical public purpose for which property may be taxed by the state. *Missouri Pacific R. R. Co.* v. *Crawford Road District,* 266 U. S. 187, 190. Whether the tax shall be state wide or confined to the county or local district wherein the improvement is made, and whether it shall be laid generally on all property or all real property within the taxing unit, or shall be laid only on real property specially benefited, are matters which rest in the discretion of the state, and are not controlled by either the due process or the equal protection clause of the Fourteenth Amendment. *County of Mobile* v. *Kimball,* 102 U. S. 691, 703; *Spencer* v. *Merchant,* 125 U. S. 345, 355-356; *Houck* v. *Little River District,* 239 U. S. 254, 262, 265; *Valley Farms Co.* v. *Westchester,* 261 U. S. 155; *Missouri Pacific R. R. Co.* v. *Crawford Road District, supra; Kansas City Southern Ry. Co.* v. *Road Improvement District No. 3,* 266 U. S. 379, 386."

In the case of *Fort Smith Light and Traction Company* v. *Board of Improvement of Paving District No. 16 of the City of Fort Smith,* 274 U. S. 387, an act, though general in form, applied only to plaintiff in error requiring it to pave the street between its tracks. Therein the court stated:

> "* * * The Fourteenth Amendment does not prohibit legislation merely because it is special, or limited in its application to a particular geographical or political subdivision of the state (numerous authorities

cited, including *Davis* v. *State*, 68 Ala. 58). If a state may delegate to a municipality power to require paving by a street railway located within its limits, *Public Service Co.* v. *Durham*, *supra* (261 U. S. 149, 152), we perceive no reason why it may not, by a legislative act, make a like requirement limited to a single municipality.

"There are no facts disclosed by the record which would enable us to say that the legislative action with which we are here concerned was necessarily arbitrary or unreasonable or justify us in overruling the judgment of the state court that it was reasonable."

In the case of *Davis* v. *State*, 68 Ala. 58, *supra*, the validity of a statute designed to prevent, in certain cases, the sale, exchange and transportation of cotton in the counties of Montgomery, Bullock, Dallas, etc., was in question. The court said:

"There is nothing, in our opinion, in either the Federal Constitution or that of the State, which prevents the legislature from enacting local laws, different in their provisions from the general code of laws for the State, and operating only in certain counties or limited territorial districts. This principle is sustained by the best approved writers on constitutional law, and was settled by this court more than twenty years ago in *Dorman* v. *State*, *supra* (34 Ala. 216), and again more recently in *Board of Revenue* v. *Barber*, 53 Ala. 589; Cooley on Const. Lim. 170."

It should be noted that *Davis* v. *State*, *supra*, was cited with approval by the Supreme Court of the United States in *Fort Smith Light Co.* v. *Paving District*, *supra*, in the year 1927.

In the case of *Kansas City Railway Co.* v. *Road Improvement District No. 3*, 266 U. S. 379, a road district had been established under general law giving authority to a

board to tax property in proportion to the benefit received by the improvement. After such assessments had been made and an action was pending protesting the assessment, the state legislature passed a special law approving the assessments made, the creation of the districts, and all of the acts of the board. Plaintiff in error took the position that the law denied to it equal protection of the laws. This court ruled to the contrary, stating:

> "By a long line of decisions in this Court it has been settled that, where the state constitution as construed by the state court of last resort does not provide otherwise, the legislature of a state may require that the cost of a local public improvement, such as the construction or reconstruction of a public road, be distributed over the lands particularly benefited and charged to them according to their value, their area or the benefits which they will receive; may itself determine what lands will be benefited and in what proportion they will share in the benefits, and may avail itself, for the purpose of that determination, of any information which it deems appropriate and sufficient, including such as may be afforded by reports and estimates made in prior assessment proceedings having the same object."

Senate Bill 1756 of Mississippi, which was held unconstitutional by the Mississippi Supreme Court, provided for the levy of an *ad valorem* tax on all property in the county to pay any deficiency not provided for by the gasoline tax. The decision of the Mississippi Supreme Court is in effect the pronouncement of a rule that revenues for local improvement can, under the Fourteenth Amendment, be produced only by *ad valorem* taxes. The gasoline tax operates equally on all persons in the same conditions, classes, and circumstances in Monroe County, just as a fairly assessed *ad valorem* tax would operate. Yet the Supreme Court of Mississippi says that since the tax does

not operate throughout the state and on all "within its jurisdiction" that it violates the Fourteenth Amendment. The legislature of the State of Mississippi determined that Monroe County needed local road improvements. A law was enacted providing for such improvements and providing for a tax which operated equally on all persons in the county. It has never been seriously questioned that the levy of an *ad valorem* tax on property within a district for local improvements does not contravene the Fourteenth Amendment even though some property may be benefited more than the other. Now, however, the state court holds that an excise tax operating equally on all within the county does contravene the Fourteenth Amendment. There is not the slightest trace of logic or reason in such a distinction. The Fourteenth Amendment requires that all persons subjected to the legislation be treated alike.

In cases dealing with personal rights, the Supreme Court of the United States has repeatedly held that the Fourteenth Amendment requires only that laws deal with all alike, within the geographical limits of its application. In *Brown* v. *New Jersey*, 175 U. S. 172, where plaintiff in error had been convicted of murder by a "stuck jury" authorized by statute on order of certain judges. Where trial was by a "stuck jury," defendant was allowed 5 peremptory challenges, and in other cases twenty such challenges were allowed. Therein, this court said:

> "The fourteenth Amendment to the Constitution of the United States does not prohibit legislation which is limited either in the objects to which it is directed, *or by the territory within which it is to operate.* It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in privileges con-

ferred and in the liabilities imposed." (Emphasis Supplied).

In the case of *Toyota* v. *Hawaii*, 226 U. S. 184, plaintiff in error was convicted of selling goods at auction, in Honolulu, without an auctioneer's license. Section 1343 of the Revised Laws of the Territory of Hawaii provided that a license in Honolulu would cost $600.00 and $15.00 for each other taxation district.

In holding that the statute did not violate the equal protection clause of the Fourteenth Amendment, this court said:

> "It cannot be said, however, that there was no reasonable basis for a distinction between Honolulu and other districts. And it was the province of the legislature to decide upon the amount of the fees which should be charged. It must be assumed that in so deciding it took into account varying conditions in the respective localties, as, for example, in the amount of business transacted and in the corresponding value of such licenses."

In the instant case, it must be assumed that the legislature determined the need for the local improvements in Monroe County. If the legislature had authority to authorize the local improvement, which is beyond question, then there is no prohibition in the Fourteenth Amendment as to taxing the people of Monroe County for this local improvement, except that such tax shall operate equally and alike on all within the county in the same classes, circumstances and conditions. There is not the slightest showing, or even an inference, on the part of protestants to the bond issue that any person in the county had been treated differently from any other person in the county in his same class and circumstance, or that any person would suffer any injury or damage on account of the tax.

The matter of the classification of Monroe County, Mississippi, in a class by itself, was a matter for the legislature and not for the judiciary. Here, however, the court has usurped the power of the legislature by declaring this Act void.

The petitioners, therefore, submit that the Supreme Court of Mississippi has reached an obviously erroneous result and that a review should be granted in order that the substantial federal question presented may be correctly determined in accordance with the applicable decisions of this Court.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this petition for a Writ of Certiorari should be granted.

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APPENDIX A.

IN THE SUPREME COURT OF MISSISSIPPI

No. 39,819.

ALLEN AIKEN WALKER, ET AL.,

VS.

BOARD OF SUPERVISORS OF MONROE COUNTY, MISSISSIPPI.

McGEHEE, CHIEF JUSTICE:

This is a proceeding to validate $498,600.00 of 1954 Road and Bridge Bonds of Monroe County, Mississippi, issued under Senate Bill 1756 approved May 4, 1954 (Chapter 524, Local and Private Laws of 1954), entitled "An Act authorizing the board of supervisors of Monroe County, Mississippi, to issue bonds in an amount not exceeding $500,000.00 for the purpose of constructing, reconstructing, and maintaining the roads and bridges of said county; prescribing the form and terms of such bonds; and providing the method of repayment."

The authority of the appellants, Allen Aiken Walker and others to have appeared in the Chancery Court to contest the validation of the bonds is not challenged.

While the title of this Act does not so disclose, Section 9 thereof provides that "an excise tax of not exceeding one cent (1) per gallon, in addition to any such tax levied and collected by the State in Monroe County, for the distribution of gasoline, may be collected for the benefit of said county, such collection to be made at the time and in the manner provided for the collection of the gas-

oline tax generally, and sums received from such tax shall be remitted by the Motor Vehicle Comptroller to the county at the same time as is remitted the amount due to the county out of the regular gasoline tax. The additional funds so derived shall be applied exclusively to paying the interest and principal on said bonds and to provide a sinking fund for retirement of same. The board of supervisors of said county, if desiring to collect said tax, shall enter an order on its minutes levying such tax, * * *."

It is important here to note that there is no provision in the Act about this excise tax not applying to gasoline "purchased and used for agricultural, maritime, industrial or domestic purposes," hereinafter discussed.

On July 13, 1954, the board of supervisors adopted its resolution declaring the intention of the board to issue the said amount of "road and bridge bonds authorized by Senate Bill 1756, Local and Private Laws, 1954, for the purpose of constructing, reconstructing and building roads and bridges of said county, including the bridge or bridges over a river or stream forming part of the boundary line of Monroe County."

This resolution set out the form of notice to the qualified electors of the county, to be published in the local newspapers for the time required by law, giving notice that on August 7, 1954, the board would direct the issuance of such bonds, for the construction, reconstruction and building of the several road and bridge projects therein set forth, unless twenty per cent of the qualified electors of the county should file their written protest against the issuance of the bonds on or before the 6th day of August, 1954, and in which event an election would be held to determine the question of whether or not such bonds should be issued.

The resolution contained the further provision that "it is not the desire of the board of supervisors for any tax to be imposed on gasoline to include any tax on refund gasoline *sold to farmers,* and that the board intends to seek an amendment to Senate Bill 1756 to that end and purpose." (Italics ours).

Thereafter the Board duly adjudicated on its minutes that 115 petitions containing an estimated 2,385 signatures, being the names of more than twenty per cent of the qualified electors, had been filed protesting the issuance of said bonds. Therefore, an election was called on the question, to be held on the 14th day of September, 1954. The notice to the qualified electors of the election recited that "said bond issue is proposed to be financed by an excise tax not exceeding one cent per gallon on gasoline sold in Monroe County, Mississippi, * * * and in the event this excise tax not exceeding one cent a gallon on the gasoline is not sufficient to meet the annual interest and the bonds as they mature annually, a special tax sufficient to provide for the payment of the interest on said bonds and the principal of said bonds shall be levied on all taxable property in Monroe County, Mississippi." Nothing was said in the notice of the election about an exemption from this gasoline tax of gasoline "purchased and used for agricultural, maritime, industrial or domestic purposes." It is stipulated in the record that the "refund" gasoline tax of one cent per gallon for gasoline purchased and used for said purposes out of the seven cents per gallon levied by the State under general law amounted to:

"Fiscal year, July, 1950 through June, 1951—$15,265.03
Fiscal year, July, 1951 through June, 1952—$20,433.31
Fiscal year, July, 1952 through June, 1953—$19,711.12."

After the election was held on September 14, 1954, and had carried by 52 votes over the required three-fifths

majority of those voting in the election, the legislature at its extraordinary session of 1954, by Senate Bill 1222, approved on September 17, 1954, amended Section 9 of Senate Bill 1756 so as to exempt and exclude from the payment of this excise tax in Monroe County all gasoline purchased and used for agricultural, maritime, industrial or domestic purposes. Therefore the subsequent resolutions and orders of the board of supervisors declaring the result of the election and providing for the issuance and sale of the bonds, and prescribing the form of the bonds, undertook to exempt from the excise tax of one cent per gallon on the gasoline sold and distributed in Monroe County such gasoline as was purchased and used for said purposes, contrary to the notice to the qualified electors which has been published prior to the election on September 14, 1954. The trial court held that this was not a material change from the question voted on in the election, although the exemption was to run throughout the life of the bonds, and although the original resolution of the board of supervisors in regard to the proposed issuance of the bonds had stated only that it was not the desire of the board that the excise tax on gasoline should be imposed on "refund" gasoline "sold to farmers", saying nothing about whether or not it was the desire of the board to exempt such gasoline was purchased and used for industrial, maritime or domestic purposes, and although the notice of the election said nothing about an exemption of any gasoline sold or distributed in the county.

Section 8 of Senate Bill 1756—a purely local or special law—provided that: "Said bonds, when issued, shall be the direct obligations of said county, and the full faith, credit, and resources of Monroe County shall be irrevocably pledged for the payment thereof. It shall be the duty of the board of supervisors annually to levy upon all taxable property within said county a special tax sufficient

to provide for the payment of the interest on said bonds as it accrues and the principal of said bonds as it matures; provided, however, that if any other funds should be or become available and be appropriated by the board of supervisors for the aforesaid purposes, or if the gasoline tax provided in Section 9 of this act should be levied and be appropriated by the board of supervisors for the aforesaid purposes, then and in that event the amount of special taxes to be levied under this section may be correspondingly reduced."

Moreover, the resolution or order of the board of supervisors providing for the holding of the election stated that the ballots used in such election shall have printed thereon the following brief statement of the amount and purpose of the proposed bond issue, to-wit: "The issuance of $498,600.00 road and bridge bonds for the purpose of constructing and reconstructing and building the roads and bridges of said county, to be financed by the levy of an excise tax not exceeding 1¢ a gallon on gasoline sold in Monroe County, Mississippi, and by levying upon all taxable property within said county, a special tax sufficient to provide for the payment of interest on said bonds and principal of said bond *in the event of* the excise tax of not exceeding 1¢ per gallon on gasoline *is not sufficient to* meet the annual interest on such bond and such bonds as will mature annually."

The bonds proposed to be validated, the form of which is set out in the order of the board made and entered subsequent to the election providing for the issuance and sale of the bonds, contain a provision on the face of the form of each bond as follows: "This bond and the issue of which it is one constitutes a lien upon all taxable property in Monroe County, Mississippi, and the board of supervisors of Monroe County, Mississippi, shall annually

levy a special tax upon all such property sufficient to pay the principal and interest of such bonds as they fall due; provided, however, that if any other funds shall be or become available and be appropriated by the board of supervisors for the aforesaid purposes or if the gasoline tax provided in Section 9 of Senate Bill 1756 of the laws of the State of Mississippi of 1954 as amended, amounting to one cent per gallon on all gasoline in addition to any such tax levied and collected by the State in Monroe County, Mississippi, for the distribution of gasoline, but this tax not to be collected from gasoline purchased and used for agricultural, maritime, industrial or domestic purposes, not used in operating motor vehicles on the public roads, streets and highways of this state, which gasoline being known as refund gasoline and such refund gasoline being entirely excluded and exempt from all provisions in Senate Bill 1756 as amended."

It will be observed that in the above quotation the sentence is incomplete, following the semi-colon therein.

However, the resolution or order of the board contains a provision, immediately following the form of the bond copied therein, to the effect that the full faith, credit, and resources of Monroe County, Mississippi, are hereby irrevocably pledged and said bonds when and as issued shall constitute a lien upon all the taxable property in Monroe County, Mississippi, and the board of supervisors shall annually levy a special tax on all such property *sufficient* to pay the principal and interest of such bonds as they fall due. And shall annually levy an excise tax of not exceeding one cent per gallon in addition to any such tax levied and collected by the State in Monroe County, Mississippi, for the distribution of gasoline, but exempting that purchased or used for agricultural, maritime, industrial or domestic purposes, whereas the resolu-

tions and order of the board entered prior to the election, including the statement on the ballots used in the election provided that the bonds were to be financed by the excise tax on gasoline, and that *in the event* the same *is not sufficient* to meet the annual interest and the bonds as they mature annually, a special (*ad valorem*) tax sufficient to provide for the payment of the interest on the bonds and the principal of said bonds shall be levied on all taxable property in Monroe County, Mississippi.

In other words, according the statement on the ballots used in the election and in the notice of the election, the voters were informed that the excise tax not exceeding one cent a gallon on gasoline sold in Monroe County, was to be the primary source for the payment of the interest and the principal of the bonds, and that the *ad valorem* tax on all of the taxable property of the county was to be levied only in the event this excise tax was not sufficient to meet the annual interest and the payment of the bonds as they mature annually.

It would seem that Section 8 of Senate Bill 1756, and which act was the controlling statute at the time the election was held on September 15, 1954, after pledging the full faith, credit, and resources of Monroe County to the payment of the bonds in question, makes it the mandatory duty of the board of supervisors of said county to levy annually upon all taxable property within said county a special (*ad valorem*) tax sufficient to provide for the payment of the interest on the bonds as it accrues and the principal of said bonds as it matures; provided, however, that if the gasoline tax provided in Section 9 of the Act should be levied and appropriated by the board of supervisors for the aforesaid purposes, then in that event the amount of special (*ad valorem*) taxes to be levied under that section may be correspondingly reduced. Section 9 of

the Act leaves it to the discretion of the board of supervisors to levy an excise tax not exceeding one cent per gallon on gasoline, in addition to any such tax levied and collected by the state in Monroe County for the distribution of gasoline, and that in the event the board of supervisors of said county, "if desiring to collect said tax," may collect the same for the benefit of said county and apply the same exclusively to paying interest and principal on said bonds, after entering an order on its minutes and publishing the same for the time required by said section to that effect.

The excise tax on gasoline is not levied by the legislature, but the making of such a levy is delegated and left to the discretion of the board of supervisors, and this delegation of authority by the legislature is made only to Monroe County, without any attempt to assign in the act a basis for the classification of those engaged in the business of selling or distributing gasoline in that county as distinguished from those engaged in such business in other counties of the state, and without stating any reason for allowing the *ad valorem* taxes in Monroe County to be reduced annually to the extent of the money collected from the excise tax as distinguished from *ad valorem* taxes paid in other counties.

But aside from the foregoing considerations, as to the validation of the proceedings leading up to and including the issuance of the bonds in the matter of what was submitted to the voters in the election and as to what was done under the authority of Senate Bill 1222, approved on September 17, 1954, following the election on September 14, 1954, and also as to what is sought to be done by making the excise tax the primary source of revenue for the payment of the interest and retiring the principal of the bonds in the light of sections 8 and 9 of Senate Bill 1756, approved on May 4, 1954, we are confronted with the far

more serious question of whether or not the Act itself, either as originally passed or as amended on September 17, 1954, by Senate Bill 1222—as a local or special act—can be upheld under the provisions of the State and Federal Constitutions.

In the outset, it may be observed that the only intimation in the original act that Monroe County is not similarly situated with the counties adjacent thereto and throughout the state, is that a bridge sought to be constructed with a part of the proceeds of the bond issue is "over a river or stream forming a part of the boundary line of Monroe County," a reference to which is made in Section 1 of the Act. However, the record discloses that the river referred to likewise forms a part of the boundary line of Clay and Lowndes Counties, and the Act discloses that neither Clay nor Lowndes County is authorized to levy an excise tax on gasoline, either as the primary or secondary source of revenue for building its part of a bridge. Moreover, there are numerous other counties in the State which have rivers forming in whole or in part one of their boundaries and are therefore similarly situated with Monroe County as to this feature of the Act in question. The Big Black River forms in whole or in part the boundary line between Warren and Claiborne Counties, Warren and Hinds Counties, Yazoo and Hinds Counties, Madison and Yazoo Counties, Holmes and Attala Counties, Carroll and Attala Counties, and Webster and Choctaw Counties. And Pearl River does so between Madison and Rankin Counties, Hinds and Rankin Counties, and Copiah and Simpson Counties.

Moreover, a general law for this purpose is already in existence in Section 8431, Code of 1942, which provides, among other things: "When a bridge shall be necessary over a stream, or any other body of water which divides

one county from another, * * * the boards of supervisors of all interested counties to which it may be necessary may join in the agreement for building, repairing and keeping the same; * * *."

It is contended by the appellants that the Act in question is in conflict with Section 90, par. L of the State Constitution, which is in the following language: "The legislature shall not pass local, private or special laws in any of the following enumerated cases, but such matters shall be provided for only by general laws, viz.: * * * (L) Laying out, opening, altering, and working roads and highways; * * *."

Counsel recognize that in the case of *Robertson* v. *Board of Supervisors of Leflore County*, 112 Miss. 54, 72 So. 852, this Court held that Chapter 424, Laws of 1916, providing for the issuance of bonds to pay for the improvement of public roads in Leflore County, does not violate Section 90, par. L of the Constitution, for the reason that it does not provide for "'laying out, opening, altering and working roads and highways,' but for the raising of revenue with which to pay for the working of roads and highways, * * *." In so holding the Court evidently overlooked Section 7 of Chapter 424, Laws of 1916, which reads as follows:

"The proceeds arising from the issuance and sale of the bonds to be issued, as provided by this act, shall be used exclusively for the improvement of the public roads, out of stone, chert, or a combination of such material with other material, or any material equally durable, and in payment to contractors or others for work done in improving such roads, and for material necessary therefor, and for engineer's services, and such salaries and wages as may be incidental to such road improvement.

If the foregoing section of that statute in providing that the improvement of the public roads should be out of stone, chert, or a combination of such material with other material, or any material equally durable, and in providing for the "payment to contractors or others for work done in improving such roads, and for material necessary therefor, and for engineer's services, and such salaries and wages as may be incidental to such road improvement" is not "providing" for working roads and highways, then it is inconceivable how Section 90, Par. (L), declaring that "The legislature shall not pass local, private or special laws" providing for "Working roads and highways" could ever be violated by a local or special law.

The case of *Memphis & C. Ry. Co.* v. *Bullen*, 154 Miss. 536, 121 So. 826, relied on by the appellee does, in the opinion on Suggestion of Error, cite the case of *Robertson* v. *Leflore County, supra*, on the question of whether Section 90, Par. (L), of the Constitution was being violated by Chapter 1080, of the Validation Acts of 1926, but the writer of the opinion evidently likewise overlooked Section 7 of Chapter 424, Laws of 1916, and merely based the holding on the one paragraph opinion rendered in the said case of *Robertson* v. *Leflore County*. The Court in the case of *Memphis & C. Ry. Co.* v. *Bullen, supra*, dealt with Chapter 278, Laws of 1926, a general law, and with Chapter 1080 of the Local and Private Laws of 1926, the first of which statutes was a general validation act of the creation of road districts throughout the state and the issuance of bonds thereof, and the latter statute was one to validate the organization of a particular road district in Tishomingo County by a local or special act. The latter statute validated the creation of the road district, confirming its boundaries, as organized under the provisions of Chapter 277, of the Laws of 1920, which was a general law, and authorized the board

of supervisors to issue additional bonds for road purposes "in the manner provided by the general laws of Mississippi" as a continuing district. We do not think that the decision in that case has such application as to be controlling on the issue of whether or not Senate Bill 1756 of the Laws of 1954, as amended, violates Section 90, Par. (L), of the State Constitution. As to the general statute there involved, Chapter 278, Laws of 1926, the first syllabus states that this curative act is held to have validated road district bonds, without regard to constitutionality of law under which they were issued." The act now before us is not a curative act, and is not contended that the $498,600.00 of bonds here involved should be validated without regard to the constitutionality of Senate Bill 1756 of the regular Session of 1954 as amended by Senate Bill 1222 of the Laws of the Extraordinary Session of 1954.

Counsel for appellants contend the decision in the case of *Robertson* v. *Leflore County, supra,* is unsound in that it undertakes to differentiate between the method of working roads and highways, and the means of doing so; that the means is an essential part of the method that the Constitution does not state that the *Method* only of working roads shall not be provided for by local law, but that it provides that the *working* of the roads shall not be so provided for; that the word "provide" is the key word in this constitutional provision, that is, the working of roads can only be provided for by general law; and that the most essential feature in the "providing" for laying out, opening, altering and working roads and highways, is to "provide" the money with which it is to be done. Counsel are supported in this contention by the subsequent case of *Land* v. *Board of Supervisors,* 114 Miss. 341, 75 So. 126, cited in the Code under Section 90 of the Constitution, which held that a statute providing for additional method of working pub-

lic roads and for the issuance of bonds therefor, being applicable throughout the state, was not unconstitutional. In the opinion in that case, although the sufficiency of the title of an Act was one of the main points at issue, the Court made an observation which is very pertinent here when it said: "Necessarily to provide additional methods for working public roads it is necessary to provide appropriate means of accomplishing a proper working of public roads. To work public roads it is necessary to provide a scheme of procuring the money necessary as roads cannot be worked without having the necessary labor and materials to work them. If money must be raised, then the methods of raising the money, including the power of taxation and the issue of bonds, would be an appropriate incident to the plan." In that case the Court said: "Section 90, Par. (L), is not applicable to this law (Chapter 172, Laws 1916) *because* the law is in no sense a local law, *but applies throughout the state,* * * *." (Italics ours).

In the matter of the issuance of the $498,600.00 bonds in the instant case the original resolution of the board of supervisors stated that they were proceeding under said Senate Bill 1756 and it was provided in the notice set forth in said resolution, and which was ordered to be published, that the proceeds of the bonds were to be used for the construction of two designated bridges, not exceeding a cost to Monroe County of $144,600.00 in one instance and not to exceed $50,000.00 in the other, and for the constructing of a certain road, including "hard surface paving," and for the construction of numerous other roads and bridges, not to exceed in cost the designated sums of money for each project therein set forth. These several projects were enumerated in the original resolution of July 13, 1954, declaring the intention of the board of supervisors to issue the bonds in the amount above mentioned unless at least twenty per

cent of the qualified electors should protest the issuance thereof for the purposes stated in the resolution, and in which event the election was to be held.

If this did not constitute "providing" for the working of roads and highways, then the issuance of bonds for building school houses, lighting and heating the same, employing teachers to teach the educable children of a school district, and for purchasing school buses and employing drivers to transport children to school would not be to "provide" for the education of school pupils. Nor would raising money for building a church, lighting and heating the same, and engaging the services of a minister of the gospel to preach in the church amount to providing for religious worship. The first step in the matter of providing for the working of roads and highways is the issuance and sale of bonds to provide the funds with which to pay engineers, employ contractors who in turn engage the services of laborers and purchase the necessary materials for the construction of the roads with such portion of the proceeds of the bond issue as is paid to the contractors for the work provided for; such is to provide for the working of the roads and highways.

The provision of the Act in Section 11 authorizes the Board of Supervisors to enter into an agreement with the state highway department for the purpose of providing sufficient funds with which the highway department "may do, all things necessary toward constructing and reconstructing roads and bridges in accordance with highway department specifications for construction and reconstruction, preparatory to the state highway department taking over said roads and bridges for state maintenance." This court has held that a bridge is a link of the road or highway on which it is located. The act, in our opinion, has the effect, for all of the foregoing reasons, of providing for working roads

and highways by local or special law contrary to Section 90, Par. (L), of our State Constitution.

The Fourteenth Amendment to the Constitution of the United States provides, among other things, that: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state * * *; * * * deny to any person *within its jurisdiction* the equal protection of the laws." (Italics ours).

In 12 Am. Jur., Constitutional Law, Section 469, it is said, among other things: "It has been repeatedly said that the guaranty of the equal protection of the laws means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances, in their lives, liberty, and property, and in pursuit of happiness. It has frequently been stated that 'the equal protection of the laws is a pledge of the protection of equal laws.' One court has added the concept that it means equality of opportunity to all in like circumstances. The guiding principle most often stated by the courts is that this constitutional guaranty requires that all persons shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liability imposed."

Under the requirement of equal protection of the law, it will be noted that the state may not deny to any person "within its jurisdiction" the equal protection of the law. Therefore the appellants and all those similarly situated in the State of Mississippi are within the jurisdiction of this state, and the question is not whether the Act now before us would apply equally to all persons in Monroe County similarly situated with the appellants, but rather whether it denies appellants the protection of the law en-

joyed by all other persons similarly situated in the State as a whole, without a basis for classification.

The only instance of an excise tax being levied on gasoline, in addition to the seven cents per gallon levied by the state, that we now recall is the excise tax on gasoline provided by general law, Chapter 319, Laws of 1924, for the building and maintenance of a seawall by all the counties which touch or join any body of tidewater. That statute applies to all counties similarly situated as a class, and where the tax was deemed necessary "for the protection of the water front from storms, caving banks, overflow and other like dangers."

It is stipulated in the record, in accordance with what is a matter of common knowledge, that prior to the enactment by the legislature of Senate Bill 1756 the only general method of raising and procuring funds for construction, reconstructing and maintaining the roads and bridges of each and every county in the State of Mississippi was by the levy and collection of *ad valorem* taxes on the property within each county, supplemented by the distribution of the portion of the statewide seven cents per gallon gasoline excise tax collected under the provisions of Article 2, Title 40, Chapter 1 of Vol. 7A Recompiled of the Code of 1942 Annotated, and supplemented by each county's pro rata portion of the statewide automobile and truck road and bridge privilege taxes. And it is further stipulated that various other counties of the state have issued and now have outstanding road bonds issued and sold under the general statutes of the state, including Chapter 241, Laws of 1950 (Section 2926-O, *et seq.*, Supplement to Code of 1942), and that such bonds are paid by *ad valorem* taxation. In other words, the Act here in question does not authorize any county other than Monroe County to levy a gasoline tax for the purpose of paying the interest on road bonds and the bonds as they mature.

A serious objection to the Act here in question is that it seeks to adopt a new formula for levying a tax whereby the taxing authorities may impose on a small group in a county the primary burden of paying for improvements enjoyed by all of the citizens thereof, contrary to the general policy throughout the state of paying for such improvements by *ad valorem* taxation; that is to say, to inaugurate a special form of a local excise tax on gasoline distributed in one county and which tax is not authorized to be levied in any other county of the state coming within the same classification. No basis for classifying Monroe County in a class to itself is set forth in the Act, and it is stipulated—as to a fact of common knowledge—that various other counties have the problem of paying interest on bonds and in paying bonds at maturity that have been issued for the construction, reconstruction, and building of roads and bridges, under Chapter 241, Laws of 1950, and under prior statutes of which it is amendatory, which is a general law amply providing for the issuance and sale of bonds to be paid off by *ad valorem* taxes, and amply sufficient for the issuance and sale of bonds for the purpose stated in the Act here in question. Then, too, we know that as a matter of state geography there are various other counties in the state where a river forms the boundary line in whole or in part and that Section 8431, Code of 1942, amply provides by general law for the solving of the problem of building a bridge or bridges across a stream which divides one county from another.

If the legislature has the power, within the limitations of the Fourteenth Amendment to the Constitution of the United States wherein it provides that no state shall deny to any person within its jurisdiction the equal protection of the law, to authorize Monroe County to inaugurate a new type of local taxation applicable to that restricted area, such as an excise tax on the distribution of gasoline,

without classification of that county being based on proper and justifiable distinctions, and to thereby discriminate against local citizens as compared to persons in other counties under the same circumstances and conditions, then it would necessarily follow that the legislature would have the constitutional right to authorize any other county in particular to levy any of the excise taxes for local purposes which are now levied by the state, such as a local income tax, an inheritance tax, soft drink tax, tobacco tax, use tax, and various other excise taxes, under and by virtue of local or special laws, and without any reasonable basis for classifying the particular county for enjoying the benefits of such special local taxation.

Disraeli is quoted as having said that: "To establish a principle is to embalm it." To paraphrase this statement, it may be said that to establish and put into effect a new tax based on a special formula is to perpetuate it in the tax system, whether it is to be applied generally or locally. As a local or special law, the Act is wholly without precedent in this state, but if its constitutional validity should be upheld, then its lack of pride in ancestry will be more than offset by its prospects for more than a scattered few in progeny. To hold that the imposition of this 1¢ per gallon tax on the distribution of gasoline in Monroe County alone, in addition to the 7¢ per gallon gasoline tax levied by the state, is a constitutionally valid precedent, as established under a local or special law in providing for "working the roads and highways", would mean that one county after another could be authorized by local or special law to levy such an additional tax to provide for the working of roads and highways not only in violation of Section 90 (L) of the State Constitution, but also in violation of the equal protection of the law clause of the Fourteenth Amendment to the Constitution of the United States if it is to be done without regard to whether or not

the authority granted by the legislature to do so is based on any reasonable or just classification.

It is stated in 11 Am. Jur., Taxation, Section 184, page 245, that: "It seems clear that a statute imposing an excise or privilege tax which is applicable only in some of the political subdivisions of the state, apparently selected without any consideration as to their size, location, or other reasonable differences from the other political subdivisions of the state, is invalid as involving an arbitrary and illegal classification."

It is stated in 12 Am. Jur., Constitutional Law, Section 481, pp. 151 to 156, that: "The general rule is well settled by unanimity of the authorities that a classification to be valid must rest upon material differences between the persons included in it and those excluded and, furthermore, must be based upon substantial distinctions. * * * Therefore, any law that is made applicable to one class of citizens only must be based on some substantial difference between the situation of that class and other individuals to which it does not apply and must rest on some reason on which it can be defended."

It is further stated in this text that: "The precept most often employed states that a classification to be valid must always rest on a difference which bears a fair, substantial, natural, reasonable and just relation to the object, act, or persons in respect to which it is proposed." The rule is similarly stated in 16 C. J. S., Sec. 520, pp. 1044 and 1045.

In *Murray* v. *Lehman*, 61 Miss. 283, in discussing the constitutional rule of equality and uniformity of taxation throughout the state, and while recognizing that the tax involved was not on property, the Court said: "This rule requires that persons in the same class and property and

rights of the same kind shall generally be subjected alike to the same common burden. There must not be local exactions, except for peculiar local advantage."

In the case of *Adams* v. *Standard Oil Co.*, 97 Miss. 879, 53 So. 692, this Court said: "It is undoubted that the power of the states to make classification of persons and property for the purposes of taxation, as well as for other purposes, is broad; but it is equally true that the mere fact of classification is not sufficient to relieve a statute from the operation of the equality clause. The classification must be based on some reasonable ground, and some real difference which bears a just and proper relation to the object sought to be accomplished."

This Court again subscribed to the principle stated in the foregoing texts when it held in the case of *Ray Toombs, County Prosecuting Attorney,* v. *Sharkey, et al.*, 140 Miss. 676, 107 So. 274, that Chapter 211, Laws of 1924, providing greater compensation for a prosecuting attorney in counties having "assessed valuation of twenty-five million dollars or more," and being "in a levee district, where a cotton tax is imposed for levee purposes" than in other counties having the same valuation, constitutes a local law, and violates the Constitution of 1890, Section 90; the classification having no reasonable basis. There were two counties, including that of the appellant, that came within the classification specified by the Act, but the Court held that the classification was not based on a reasonable ground for a classification. We cite this case only to show that the classification must be based on some reasonable ground which distinguishes the county or counties to which it is intended to apply from other counties in the state; that is to say, it must bear some reasonable relation to the problem involved to distinguish the county for special classification.

It is contended that the Act also violates Sections 33, 71, 90 par. (h), 112, and 170 of the State Constitution, as to which we deem it unnecessary to express an opinion. The Act contains no saving clause to provide that the fact that one section thereof may be held to be unconstitutional will not affect the remaining sections that may not contravene the Constitution. At any rate, the two separate forms of taxation provided for in the Act are so interwoven under the provisions of the Act that we have concluded that since the Act violates Section 90 (L) of the State Constitution and the equal protection of the law clause of the Fourteenth amendment of the Constitution of the United States, the same should be held unconstitutional as a whole; and that therefore the proceeding for the validation of the bonds in question should be dismissed, and that a judgment should be rendered here for the appellants.

REVERSED AND JUDGMENT HERE FOR THE APPELLANTS.

ALL JUSTICES CONCUR, EXCEPT ROBERDS AND KYLE, J. J., WHO TOOK NO PART.

APPENDIX B.

Friday, July 15, 1955, Court Sitting:

Allen Walker et al.,

39,819

Board of Supervisors, Monroe County.

This cause this day came on to be heard on the suggestion of error filed herein and this court having sufficiently examined and considered the same and being of the opinion that the same should be overruled doth order and adjudge that said suggestion of error be and the same is hereby overruled.

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APPENDIX C.

MISSISSIPPI LEGISLATURE REGULAR SESSION 1954

Senate Bill No. 1756

AN ACT AUTHORIZING THE BOARD OF SUPERVISORS OF MONROE COUNTY, MISSISSIPPI, TO ISSUE BONDS IN AN AMOUNT NOT EXCEEDING $500,000.00 FOR THE PURPOSE OF CONSTRUCTING, RECONSTRUCTING, AND MAINTAINING THE ROADS AND BRIDGES OF SAID COUNTY; PRESCRIBING THE FORM AND TERMS OF SUCH BONDS; AND PROVIDING THE METHOD OF REPAYMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. The board of supervisors of Monroe County, Mississippi, is hereby authorized and empowered, in its discretion, to issue negotiable bonds of said county in a sum not to exceed five hundred thousand dollars ($500,000.00) to raise funds for the purpose of constructing, reconstructing, and maintaining the roads and bridges of said county. The bridge construction may include a bridge or bridges over a river or stream forming part of the boundary line of Monroe County. The word "bonds" as used in this act shall be deemed to mean and include bonds, notes, or certificates of indebtedness.

SECTION 2. Before issuing any bonds for any of the purposes herein enumerated, the board of supervisors shall adopt a resolution declaring its intention so to do, stating the amount of bonds proposed to be issued and the purpose for which the bonds are to be issued, and the date

upon which the board proposes to direct the issuance of such bonds. Such resolution shall be published once a week for at least three (3) consecutive weeks in at least one newspaper published in such county. The first publication of such resolution shall be made not less than twenty-one (21) days prior to the date fixed in such resolution for the issuance of the bonds, and the last publication shall be made not more than seven (7) days prior to such date. If twenty per cent (20%) of the qualified electors of the county shall file a written protest against the issuance of such bonds on or before the date specified in such resolution, then an election on the question of the issuance of such bonds shall be called and held as is herein provided. If no such protest be filed, then such bonds may be issued, either in whole or in part, without an election on the question of the issuance thereof, at any time within a period of two (2) years after the date specified in the above mentioned resolution; provided, however, that the board of supervisors, in its discretion, may nevertheless call an election on such question, in which event it shall not be necessary to publish the resolution declaring its intention to issue such bonds as herein provided.

SECTION 3. Where an election is to be called, as provided in the preceding section, notice of such election shall be signed by the clerk of the board of supervisors and shall be published once a week for at least three (3) consecutive weeks, in at least one newspaper published in such county. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed for such election, and the last publication shall be made not more than seven (7) days prior to such date.

SECTION 4. Such election shall be held, as far as is practicable, in the same manner as other elections are held in counties. At such election all qualified electors of such

county may vote, and the ballots used at such election shall have printed thereon a brief statement of the amount and purpose of the proposed bond issue and the words "FOR THE BOND ISSUE" and "AGAINST THE BOND ISSUE," and the voter shall vote by placing a cross (X) or check (√) mark opposite his choice on the proposition.

SECTION 5. When the results of the election on the question of the issuance of such bonds shall have been canvassed by the election commissioners of such county and certified by them to the board of supervisors of such county, it shall be the duty of such board of supervisors to determine and adjudicate whether or not three-fifths (3/5) of the qualified electors who voted in such election voted in favor of the issuance of such bonds and, unless three-fifths (3/5) of the qualified electors who voted in such election shall have voted in favor of the issuance of such bonds then such bonds shall not be issued. Should three-fifths (3/5) of the qualified electors who vote in such election vote in favor of the issuance of such bonds, then the board of supervisors of the county may issue such bonds, either in whole or in part, within two (2) years from the date of such election, or within two (2) years after the final favorable termination of any litigation affecting the issuance of such bonds, as such board shall deem best.

SECTION 6. All bonds issued pursuant to this act shall mature annually, with all maturities not longer than twenty-five (25) years, with not less than one-fiftieth (1/50) of the total issue to mature each year during the first five (5) years of the life of such bonds, not less than one-twenty-fifth (1/25) of the total issue to mature each year during the succeeding ten-year period of the life of such bonds, and the remainder to be divided into approximately equal annual payments, one payment to mature each year for the remaining life of such bonds. Such bonds

shall not bear a greater rate of interest than five per cent (5%) per annum, and the denomination, form, and place or places of payment of such bonds shall be fixed in the resolution or order of the board of supervisors issuing such bonds. Such bonds shall be signed by the president of the board of supervisors, and countersigned by the clerk thereof, with the official seal of the county affixed thereto, but the coupons may bear only the facsimile signatures of such president and clerk. No bonds shall be issued and sold under the provisions of this act for less than par and accrued interest, and not more than one series of interest coupons shall be attached to any bonds issued under the provisions of this act, but all interest accruing on such bonds so issued shall be payable semiannually, except that the first interest coupon attached to any such bond may be for any period not exceeding one year.

SECTION 7. The proceeds of any bonds issued by said county shall be placed in the county treasury or depository, if there be one, as a special fund, and shall be used for no other purpose than that for which such bonds were authorized to be issued. If the board of supervisors of such county, or any member thereof, or any other officer, shall wilfully divert or aid or assist in diverting any such fund, or any part thereof, to any purpose other than that for which such bonds were authorized to be issued, then such person shall be guilty of a felony and, upon conviction, shall be punished by imprisonment in the state penitentiary for a term not exceeding five (5) years and, in addition, he shall be liable personally and on his official bond for the amount so diverted. Any member of such board of supervisors may escape the penalty provided for above by requesting and having his vote recorded in the negative on any illegal diversion of the proceeds of such bonds.

SECTION 8. Said bonds, when issued, shall be the direct obligations of said county, and the full faith, credit, and resources of Monroe County shall be irrevocably pledged for the payment thereof. It shall be the duty of the board of supervisors annually to levy upon all taxable property within said county a special tax sufficient to provide for the payment of the interest on said bonds as it accrues and the principal of said bonds as it matures; provided, however, that if any other funds should be or become available and be appropriated by the board of supervisors for the aforesaid purposes, or if the gasoline tax provided in section 9 of this act should be levied and be appropriated by the board of supervisors for the aforesaid purposes, then and in that event the amount of special taxes to be levied under this section may be correspondingly reduced.

SECTION 9. An excise tax of not exceeding one cent (1¢) per gallon, in addition to any such tax levied and collected by the state in Monroe County, for the distribution of gasoline, may be collected for the benefit of said county, such collection to be made at the time and in the manner provided for the collection of the gasoline tax generally, and sums received from such tax shall be remitted by the motor vehicle comptroller to the county at the same time as is remitted the amount due to the county out of the regular gasoline tax. The additional funds so derived shall be applied exclusively to paying interest and principal on said bonds and to provide a sinking fund for retirement of same. The board of supervisors of said county, if desiring to collect said tax, shall enter an order on its minutes levying such tax, shall publish notice of such levy for three (3) weeks in at least one newspaper published in said county, and upon completion of publication shall send a certified copy of such order and proof of publication of such order to the motor vehicle comptroller.

SECTION 10. The tax or taxes hereby authorized are in addition to any other tax which may now or hereafter be authorized by law. Except as provided in this act, all of the provisions of chapter 241, laws of 1950, as amended, shall apply to any indebtedness incurred or bonds issued under the authority of this act.

SECTION 11. The board of supervisors is hereby authorized to enter into an agreement with the state highway department for the purpose of providing sufficient funds with which the highway department may do all things necessary toward constructing and reconstructing roads and bridges in accordance with highway department specifications for construction and reconstruction, preparatory to the state highway department taking over said roads and bridges for state maintenance.

SECTION 12. This act shall take effect and be in force from and after its passage.

APPENDIX C.

Constitution of the United States

ARTICLE XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX D.

Par. IV.

That said Senate Bill No. 1756, hereinafter merely referred to for convenience as the "Act," is in contravention of the Constitution of the United States, especially the Fourteenth Amendment thereto, the due process clause and the equal protection clause thereof; and is in contravention of the terms and provisions of the Constitution of the State of Mississippi, especially Section 14, Section 33, Section 87, Section 89, Section 90, Section 112, and Section 181. The manner in which said Act contravenes a portion of said sections of the Constitution is hereinafter set out in more detail.

Par. XIX.

That the Act does not afford a just basis for the issuance of said bonds, and does not legally and constitutionally authorize the issuance and sale thereof because the act is violative of both the Constitution of the United States and the Constitution of the State of Mississippi, and particularly Section 14 of the Constitution of the State of Mississippi, and the Fourteenth Amendment to the Constitution of the United States, and particularly the due process of law clause thereof, in that the act is obnoxious to the constitutional guaranty of equal protection of law, as it seeks to impose upon gasoline and those persons, firms and corporations dealing in, handling, selling and distributing gasoline, a tax or burden in Monroe County, Mississippi, which is not imposed upon the same class of persons, firms and corporations in the other counties of the State of Mississippi. That the counties of the State

of Mississippi, other than Monroe, have issued and have outstanding bonds, debts and obligations of a similar character to those authorized by the Act, all of which are met and retired by *ad valorem* taxes, while in the particular County of Monroe, this Act undertakes to authorize a tax on gasoline or to permit the Board of Supervisors to transfer the tax from the basis upon which such obligations are paid in the other counties in the State of Mississippi, to a tax upon gasoline and those persons, firms or corporations who handle gasoline, thus discriminating against the property rights in gasoline and the persons, firms and corporation owning, possessing, selling and handling gasoline, and thereby depriving them of their property and rights without due process of law, and failing to afford to them the equal protection of the law.

Par. XXVI.

That the Act does not afford a just basis for the issuance of said bonds, and does not legally and constitutionally authorize the issuance and sale thereof because the Act violates the due process clause and the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, not only because of its discrimination between the taxpayers and property owners of Monroe County and those located within other counties of said State, but it imposes an unjust discrimination within the boundaries of Monroe County itself. Any benefits derived from the use of the proceeds of the sale of the bonds authorized by the Act, would be a common benefit to all the people of the county; it would be a common benefit to all the taxpayers and property owners of said county. Yet, the property of one particular class of persons, to-wit; the owners, holders, handlers, purchasers, consumers and distributors of gasoline, is arbitrarily and unreasonably assessed with the burden imposed

by the Act without any consideration of the proposition of the benefits received by that class, and by the terms of the Act, one class of property owners is discriminated against to the extent of requiring that class to pay the principal burden of a tax to defray the expense or benefits common to all the people of said county, and all the property owners and taxpayers thereof.

FILED
SEP 16 1955
HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. —401

BOARD OF SUPERVISORS OF MONROE COUNTY, MISSISSIPPI,

Petitioners,

vs.

ALLEN A. WALKER, ET ALS.,

Respondents

RESPONDENTS RESPONSE AND MOTION TO DISMISS OR AFFIRM

FRED B. SMITH,
Ripley, Mississippi.
RICHARD B. BOOTH,
Aberdeen, Mississippi.
GARNER W. GREEN,
Jackson, Mississippi.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. —

BOARD OF SUPERVISORS OF MONROE COUNTY, MISSISSIPPI,

Petitioners,

vs.

ALLEN A. WALKER, ET ALS.,

Respondents

RESPONDENTS RESPONSE AND MOTION TO DISMISS OR AFFIRM

Respondents move this Court to dismiss the application for certiorari because groundless as hereinafter shown, but, if granted, then that this Court forthwith affirm as the decision of Mississippi's Court under Section 90(1) of its *Constitution* is here conclusive and must be followed.

I. Preliminary Statement

The Board of Supervisors of Monroe County, whose jurisdiction arises under Section 170 of the *Mississippi Constitution,* appended as Appendix "A", sought to issue $498,000.00 of Monroe County bonds in virtue of an act entitled:

"An act authorizing the Board of Supervisors of Monroe County, Mississippi, to issue bonds in an amount

not exceeding $500,000.00 for the purpose of constructing, reconstructing, and maintaining the roads and bridges of said county; prescribing the form and terms of such bonds; and providing the method of repayment,"

Chapter 524 of the Local and Private Laws of Mississippi, 1954, hereinafter called "the Act", a copy of which is appended as Appendix "B".

Thereasto petitioners assumed to take the statutory steps and they filed, in the Chancery Court of Monroe County, a petition to validate said issue. Compare Section 4314, *Mississippi Code of 1942.*

Therein petitioners neither directly nor indirectly sought to raise a Federal question. The Chancellor haxing fixed the 19th day of November, 1954, for such validation, respondents, vitally affected by that thus sought to be done through said issuance, appeared and challenged the validity of the proceeding under *Roller* v. *Holly,* 176 U.S. 398, 44 L. ed. 520, *inter alia,* by reason of the shortness of time thereasto provided, and thereasagainst in the protest set up:

(A) Procedural defects thus assigned as error and epitomized in the Mississippi Supreme Court by respondents:

1. "That the bonds are invalid and illegal because a portion of the proceeding undertaking to issue and sell same, was had at an adjourned meeting of the Board of Supervisors of said county, purported to have been held on the 19th day of October, 1954, and that said adjourned meeting was illegally called and held, and the board had no authority of law on that date to enter the order relative to said bonds, then undertaken to be entered." (Appellants Br., p. 2)

2. "That the Act was amended by the Legislature between the date of the election on the issuance of said bonds, and the date on which the resolution undertaking to issue the bonds was adopted and entered, and that the bonds

were attempted to be issued under an amended statute which was materially different from that in existence at the time of the election, and that the bonds were not issued on the basis on which the matter was submitted to the qualified electors for their determination." (Appellants Br., p. 3)

3. "The Change made in, and the addition to, the order of the Board of Supervisors adjourning the regular October, 1954, meeting until October 19, 1954, was illegal and void, and vitiated everything done at said meeting, * * *." (Appellants Br., p. 12)

4. "The Board of Supervisors of Monroe County had no authority or legal right, after entering its resolution and giving notice to the qualified electors that a gasoline tax of one cent per gallon would be levied on all the gasoline sold in said county, to assist in paying the principal of and interest on said bonds, and after holding the election on the proposal so stated, and as originally outlined in Senate Bill Number 1756, to then materially change the proposition so submitted to the people at said election, and in finally entering its resolution issuing such bonds to exempt from the payment of said gasoline tax a substantial portion of the gasoline sold in said County, to-wit, all that sold for agricultural, maritime, industrial or domestic purposes, * * *." (Appellants Br., p. 19)

5. Other procedural questions of equal import, not stated to avoid prolixity. (Whereto divers Mississippi and other authorities were collected, cited and relied upon).

(B) Questions arising under the *Constitution of Mississippi*, each Section thereof being now quoted, together with the decisions defining such questions, and relied upon by respondents in the Supreme Court of Mississippi:

1. Section 14, which provides:

> "No person shall be deprived of life, liberty, or property except by due process of law."

(This section may be possibly interpreted as the equivalent of the Equal Protection Clause by virtue of a somewhat similar ruling by this Court as to the Fifth Amendment. See *Bolling* v. *Sharpe,* 347 U.S. 497, 98 L. ed. 884, and *Detroit Bank* v. *United States,* 317 U. S. 329, 87 L. ed. 304).

2. Section 33 of the *Constitution,* which provides:

> "The legislative power of this state shall be vested in a legislature which shall consist of a senate and house of representatives."

See *Williams* v. *Cammack,* 27 Miss. 209; *Alcorn* v. *Hamer,* 38 Miss. 652; *Panama Refining Company* v. *Ryan,* 293 U. S. 388, 79 L. ed. 446; 11 *American Jurisprudence,* "Constitutional Law", Section 215, page 923, and Section 234, Page 947.

3. Section 71, which provides:

> "Every bill introduced into the legislature shall have a title, and the title ought to indicate clearly the subject-matter or matters of the proposed legislation. Each committee to which a bill may be referred shall express in writing, its judgment of the sufficiency of the title of the bill, and this, too, whether the recommendation be that the bill do pass or do not pass."

(Not cited, but pertinent is *Levee Commissioners* v. *Insurance Co.,* 96 Miss. 832, 51 So. 2 but note *Roseberry* v. *Norsworthy,* 135 Miss. 845, 100 So. 514; *City of Jackson* v. *State,* 102 Miss. 663, 59 So. 873).

4. Section 90(h), which provides:

> "The legislature shall not pass local, private, or special laws in any of the following enumerated cases, but such matters shall be provided for only by general laws, viz.:

"Exemption of property from taxation or from levy or sale."

City of Biloxi v. *Trustees of Miss. A. C. E. Fund,* 179 Miss. 47, 173 So. 797; *Adams* v. *Miss. State Bank,* 75 Miss. 701, 23 So. 395.

5. Section 112, which provides:

"Taxation shall be uniform and equal throughout the state. Property shall be taxed in proportion to its value. The legislature may, however, impose a tax per capita upon such domestic animals as from their nature and habits are destructive of other property. Property shall be assessed for taxes under general laws and by uniform rules, according to its true value. But the legislature may provide for a special mode of valuation and assessment for railroads, and railroad and other corporate property, or for particular species of property belonging to persons, corporations, or associations not situated wholly in one county. But all such property shall be assessed at its true value, and no county shall be denied the right to levy county and special taxes upon such assessment as in other cases of property situated and assessed in the county."

Reed Bros. v. *Lee Company,* 126 Miss. 162, 88 So. 540; *Gunter* v. *Jackson,* 130 Miss. 637, 94 So. 844; dissenting opinion of Chief Justice Smith in *Gulf Refining Company* v. *Stone,* 179 Miss. 713, 21 So. 2d 19, 24; *Adams* v. *Miss. State Bank,* 75 Miss. 701, 23 So., 395; *Adams* v. *Bank of Oxford,* 78 Miss. 532, 29 So. 402; *Adams* v. *Miss. Lumber Company,* 84 Miss. 23, 36 So., 68; *Murray* v. *Lehman,* 61 Miss. 283; *Thompson* v. *Kreutzer,* 112 Miss. 165, 72 So. 891; *Thompson* v. *McLeod,* 112 Miss. 383, 73 So. 193; *Chicago R. I. & P. R. Company* v. *Robertson,* 122 Miss. 417, 84 So. 449; *Hattiesburg Grocery Co.* v. *Robertson,* 126 Miss. 34, 88 So. 4, Suggestion of Error overruled, 89 So. 369 (with

dissent by Mr. Justice Sykes and Mr. Justice Anderson), error dismissed, 260 U. S. 710, 67 L. ed. 475.

6. Section 170, which provides:

> "Each county shall be divided into five districts, a resident freeholder of each district shall be selected, in the manner prescribed by law, and the five so chosen shall constitute the board of supervisors of the county, a majority of whom may transact business. The board of supervisors shall have full jurisdiction over roads, ferries, and bridges, to be exercised in accordance with such regulations as the legislature may prescribe, and perform such other duties as may be required by law; provided, however, that the legislature may have the power to designate certain highways as "state highways," and place such highways under the control and supervision of the state highway commission, for construction and maintenance. The clerk of the chancery court shall be the clerk of the board of supervisors."

Board of Supervisors of Claiborne County v. *Callender*, 128 Miss. 159, 90 So. 722; *Board of Supervisors of Quitman County* v. *Self*, 156 Miss. 273, 125 So. 828.

7. Section 90(1), which provides:

> "The legislature shall not pass local, private, or special laws in any of the following enumerated cases, but such matters shall be provided for only by general laws:
>
> "Laying out, opening, altering and working roads and highways."

(C) Questions under the "due process" Clause and "equal protection" Clause of the Fourteenth Amendment of the *United States Constitution*, Appendix "C" hereto, which questions were not raised by petitioners in their

pleadings, but were raised by respondents; however, since the Supreme Court of Mississippi ultimately passed thereon, thereasto the final authority rests in this Court, provided jurisdiction should be here assumed.

Thereupon, the Chancery Court of Monroe County entered a decree validating said bonds and an appeal was made by these respondents to the Supreme Court of Mississippi. On that appeal, respondents raised the local procedural questions, the State Constitutional questions and the Federal Constitutional questions hereinabove set out.

The Supreme Court of Mississippi, as shown by its opinion, Appendix "D", adverted, in part, to the above procedural questions, but did not make a judicial determination thereof.

As to some of the State Constitutional questions, the Court pretermitted a decision thereasto, and said:——— Miss. ————, 81 So. 2d, 225, 235 (Advance Sheets):

> "It is contended that the Act also violates Sections 33, 71, 90, par. (h), 112, and 170 of the State Constitution, as to which we deem it unnecessary to express an opinion."

Whereupon Mississippi's Court expressly passed upon Section 90(1) of the *Constitution of Mississippi*, holding that the Act was a local Act and not a general, statewide one, whereasto, the Court unanimously said, 81 So. 2d. 231, (Advance Sheets):

> "The Act, in our opinion, has the effect, for all of the foregoing reasons, of providing for working roads and highways by local or special law contrary to Section 90, par. (1), of our State Constitution."

The opinion concluded that: " * * * since the Act violates *Section 90(1) of the State Constitution* and the Equal Pro-

tection of Law Clause of the Fourteenth Amendment of the Constitution of the United States, the same should be held unconstitutional as a whole." (Emphasis ours, unless otherwise noted.)

There are, therefore, ample local questions decided by the Supreme Court of Mississippi to compel an affirmance; there are even more substantial local questions left undecided, which stand in the way of an exercise by this Court of its jurisdiction.

It is to be noted that Mississippi's Court has not denied the right to Mississippi's legislature to create a local taxing district for special improvements whereasto the general equality clause was not applicable. Compare *Daily* v. *Swope*, 47 Miss. 367; *Nugent* v. *City of Jackson*, 72 Miss. 1040, 18 So. 493; *Adams* v. *Bank*, 78 Miss. 532, 29 So. 402; *Memphis & Charleston Railway Co.* v. *Pace*, 1931, 282 U.S. 241, 75 L.ed. 315, affirming 154 Miss. 536, 121 So. 826.

But this act is *sui generis* in that:

(1) The bonds are made full faith and credit bonds of a municipal corporation—the County of Monroe, a governmental municipality, but low down in the scale of corporate powers. *Jefferson County* v. *Grafton*, 74 Miss. 435, 21 So. 247.

(2) With full jurisdiction vested in the Board of Supervisors by Section 170 of the *Mississippi Constitution*, the Board was authorized to apply in payment of these bonds such general road funds as might be available. Section 8 provided:

> " • • • provided, however, that if any other funds should be or become available and be appropriated by the board of supervisors for the aforesaid purposes, or if the gasoline tax provided in section 9 of this act should be levied and be appropriated by the board of supervisors for the aforesaid purposes, then and in

that event the amount of special taxes to be levied under this section may be correspondingly reduced."

(3) Further, the Supervisors were mandatorily required to levy an ad valorem tax on all taxable property in Monroe County in consonance with Section 112 of the *Mississippi Constitution*, which had to be equal and uniform throughout the state.

(4) Then came the excise on gasoline, not to exceed 1¢ per gallon imposed not by the legislature but by the Supervisors in virtue of a delegated power applicable solely to Monroe County, notwithstanding that such delegation was not permissible. The Court said: (81 So. 2d 228 (Adv. Sheet))

> The excise tax on gasoline is not levied by the legislature, but the making of such a levy is delegated and left to the discretion of the board of supervisors, and this delegation of authority by the legislature is made only to Monroe County, without any attempt to assign in the act a basis for the classification of those engaged in the business of selling or distributing gasoline in that county as distinguished from those engaged in such business in other counties of the state, and without stating any reason for allowing the ad valorem taxes in Monroe County to be reduced annually to the extent of the money collected from the excise tax as distinguished from ad valorem taxes paid in other counties."

Compare *Alcorn* v. *Hamer*, 38 Miss. 652; and this determination is here conclusive.

Further, that local taxation was, under the opinion of the Court, fraught with the most dire consequences. Compare *Ray Toombs, County Prosecuting Attorney*, v. *Sharkey, et al.*, 140 Miss. 676, 107 So. 274; *Adams* v.

Standard Oil Co., 97 Miss. 879, 53 So. 692; *Murray* v. *Lehman*, 61 Miss. 283.

Thus, that substantially held—and, with deference, properly applying the decisions of this Court thereasto—was that Monroe County could not out of all of the other counties in the State of Mississippi be thus vouchsafed rights under:

(i) *Mississippi's Constitution;* and, likewise,

(ii) *Constitution of the United States.*

Our submission, with deference, hereasto is that the Learned Chief Justice correctly integrated the background quoad this taxation, the character of the corporation possessing this element of sovereignty; and, so thus doing, he found that the other counties with their inhabitants were entitled to equal laws, not only under the local *Constitution of Mississippi* but as well, and independently thereof, under the supreme law of the land here adjudicated. We, with deference, insist that his determination of this Federal question was fundamentally sound and in strict accordance with the authorities on which he relied.

II. Response to Petitioners' Brief

1. The opinion below, though not officially reported yet, appears in 81 So. 2d. 225, (Advance Sheets).

2. Learned counsel appropriately invoke 28 *U.S.C.*, Sec. 1257 (3). We make reference also to c. 646, 62 Stat. 929, and especially to Revised Rule 19 of this Court.

3. Learned counsel proposes as question number 1:

"1. Whether or not a state legislature may impose an excise tax for local improvements on a particular county or locality in conformity with the Fourteenth Amendment to the Federal Constitution." With deference, the sole

question determined under the *Constitution of Mississippi* by Mississippi's Court was that:

(a) Section 90(1) of the *Constitution of Mississippi* invalidated the Act as a local act, there being full power under general law to conserve Mississippi's welfare and having in its opinion, Appendix "D" hereto, demonstrated:

(1) The existence of vital procedural questions.

(2) The existence of state questions under Sections 33, 71, 112, and 90(h), pretermitting state decisions thereasto as well as to Section 14, but making an illuminating and discriminating exposition, supported fully under *Angel* v. *Bullington*, 326 U.S. 713, 90 L.ed. 421, of the fact that this local act, passed as such, could not under Section 90(1) be made operative in Mississippi. Compare *Horton* v. *King*, 113 Miss. 60, 73 So. 871; where it was said, p. 872:

> " • • • A law for the assessment of taxes that is not general in its scope and does not provide a rule consistent with the general rule, violates both of the rules prescribed by the Constitution. The law under review does not purport to be a general law; it is, in terms, a special law, and local in its application. The law undertakes to provide for some real or imaginary condition existing in Lincoln County, and then authorizes an assessment of lands in Lincoln County not authorized in the remaining counties of the state. If this law is not void, it is manifest that special and different laws for every county of the state could be passed. The known fecundity of the legislative mind resulted in the adoption of this limitation upon their procreative powers. It is one of the well-known facts that members of the Legislature either believe, or some of their constituents believe, that they represent a constituency different from the common run of folks, and

therefore a special bill must be passed limited to the peculiar conditions at home. This fact accounts for the numerous special laws, a very large portion of which serve no good purpose. So it was the makers of the Constitution put on the brakes so far as the assessment of property is concerned, or, rather, to be more accurate, the people in convention assembled attempted to make it plain that special laws for the assessment of property should never be introduced or passed. There are numerous 'shall nots' in the Constitution that are habitually disregarded, and the one under discussion comes in for frequent contemptuous treatment for no apparent or imaginable reason."

Approved in *Blodgett* v. *Pearl River County*, 134 Miss. 816, 98 So. 227, 228; *Bullock* v. *Board of Supervisors of Covington County, Miss.*, 77 So. 662; *Reed Bros.* v. *Board of Supervisors of Lee County*, 126 Miss. 162, 88 So. 504, 505; see *Pearl River County* v. *Lacey Lbr. Co.*, 124 Miss. 85, 86 So. 755; *Board of Supervisors* v. *Gulf Coast Military Academy*, 126 Miss. 729, 89 So. 617.

(3) Mississippi's Court has uniformly vouchsafed the greatest flexibility to special improvement districts irrespective of their kind and character. Compare *Gibbs* v. *Green*, 54 Miss. 592. As to special assessments within levee districts, the Constitution itself has conferred specific authority, Section 228, et seq., *Mississippi Constitution*. With deference, opposite counsel oust their jurisdiction on this score by the decision in *Memphis & Charleston Railway Co.* v. *Pace*, supra, wherein the plenary power of the legislature is made perfectly apparent; and this Court affirmed Mississippi's Court.

(4). It is true that in the case of *Robertson* v. *Board of Supervisors of Leflore County*, 112 Miss. 54, 72 So. 852, in 1916, the then Court, for some cause not now apparent,

overlooked a section of the statute specifically adverted to by the Court in its present opinion. This, with deference, demonstrates that even Jove may nod; but when rectification is wrought by a subsequent decision viewing clearly the omitted factors, constitutional guaranties have not been invaded. Compare *Adams* v. *Yazoo & M.V.R. Co.*, 77 Miss. 194 24 So. 200, 77 Miss. 278, 24 So. 317, following *Cross* v. *Burke*, 146 U.S. 82, 36 L. ed. 896; *Rice* v. *Sioux City Cemetery*, 349 U.S. 70, 99 L. ed. 507 (Advance Sheets). But Mississippi's Court, when it has laid down a rule, with deference, has gone further than this Court in preserving the property rights engendered thereby. Compare *Wisconsin Lumber Co.* v. *State*, 97 Miss. 571, 54 So. 247; *Posey* v. *Bank of Philadelphia*, 130 Miss. 530, 92 So. 840, 130 Miss. 825, 95 So. 134; and *Central Land Co.* v. *Laidley*, 159 U.S. 103, 40 L. ed. 91; and in this case these bonds were not sold, had not been purchased and no completed transaction had been had on the faith of this case so that under no possible circumstances could it have in any way misled. If the prior decision was mischievous, it became the Court's duty to overrule. *Brewer* v. *Browning*, 115 Miss. 358, 76 So. 267. The decision in *Murray* v. *Lehman*, *supra*, was and is a landmark and, with deference, those motivated simply underestimated the vitality of *Mississippi's Constitution* when they wrongfully sought under a local act to have that which was not available under the same law statewide.

(5). Counsel next say, as a question presented for review:

> "2. Whether or not the Supreme Court of Mississippi committed error in deciding a federal question of substance, to-wit, that the imposition of a gasoline excise tax on Monroe County, Mississippi, for local improvements for roads and bridges violated the equal

protection clause of the Fourteenth Amendment to the Federal Constitution."

Petitioner comes here by grace and not as of right; and, with the utmost deference, this case does not go, so far as its actual decision is concerned, beyond expressly determining that this local act as to Monroe County may not be therein effective because it was not a statewide enactment. As pointed out, this statute with its background is *sui generis* and naught thereunder has become *fait accompli*. If there be merit, whereasto we do not assume to judge, the legislature may, to the extent that the public welfare demands, rectify. But, with deference, Learned Counsel did not in their petition consider appropriately Revised Rule 19 of this Court. Compare *United States* v. *Federal Power Commission*, 345 U.S. 153, 97 L. ed. 918; *Rice* v. *Sioux City Cemetery*, supra; dissenting opinion of Mr. Justice Frankfurter in *McAllister* v. *United States*, 348 U.S. 19, 99 L. ed. 13, 16 (Advance Sheets).

Furthermore, in citing the decisions of this Court, we are doubly mindful that its members have the untold advantage of knowing both the exoteric and the esoteric, whereas our knowledge is only from the printed page.

Learned Counsel specifically overlook the necessity as to the importance of the question whereasto certiorari is to be, this Court being fully mindful of its constitutional duty. Normally, as was said by Mr. Justice Black in *Peters* v. *Hobby*, U.S. , 99 L. ed. 677, 688 (Advance Sheets):

> "* * * I agree that it is generally better for this Court not to decide constitutional questions in cases which can be adequately disposed of on non-constitutional grounds.* * *"

Very obviously the Federal constitutional question need not be in any wise reached for the state decision is appro-

priately based, so far as the decision goes, exclusively upon a violation of Section 90(1) of *Mississippi's Constitution*, requiring that, if Mississippi's legislature desires to do that attempted, it should be by general law and not by local act. Note *Williams* v. *Georgia*, U.S. , 99 L. ed. 703 (Advance Sheets); but both majority and minority seem to agree upon that said in the dissent, p. 716:

> "* * * We have always insisted that, if possible, state courts be permitted to decide difficult and uncertain questions of state law before the federal courts do so, even to the point of having the federal courts decline jurisdiction to await the the State's ruling. Compare Burford v. Sun Oil Co. 319 U.S. 315, 87 L ed. 1424, 63 S. Ct. 1098. To me nothing could be clearer than that a state question arising in a case which is to be remanded to the state court should be left open for resolution by the State without the pressure of a decision by this Court."

See *Minnesota* v. *National Tea Co.*, 309 U.S. 551, 84 L. ed. 920; *Missouri* v. *Mayfield*, 340 U.S. 1, 95 L. ed. 3; and *Edelman* v. *California*, 344 U.S. 357, 97 L. ed. 387. And in this case the Supreme Court of Mississippi not only decided that the legislature could not by local law create this obligation but so did in such a wise as to make the opinion absolutely conclusive from every angle, *Re Murchison*, U.S. , 99 L. ed. 551 (Advance Sheets). The federal question could not arise in this case if, as the Supreme Court of Mississippi held, the statute violated Section 90(1) and potentially violated (a) procedural matters and (b) other sections of the *Constitution of Mississippi*. Note *Ellis* v. *Dixon*, U.S. 99 L. ed. 751, 753 (Advance Sheets), where it is said:

> "The New York Court of Appeals denied petitioner's motion for leave to appeal without stating any ground

for its decision. 306 NY 981. In these circumstances we must ascertain whether that court's decision 'might' have rested on a nonfederal ground, for if it did we must decline to take jurisdiction. Stembridge v. Georgia, 343 US 541, 96 L. ed. 1130, 1133, 72 S Ct 834 (1952); see also Lynch v. New York, 293 US 52, 54, 79 L ed 191, 192, 55 S Ct 16 (1934). * * *"

Thereunder Mississippi's Court has squarely met the issue as to the local question. See also *Rice* v. *Sioux City Cemetery*, 349 US 70, 99 L. ed. 507, (Advance Sheets); *Buck* v. *People of State of California*, 343 U.S. 99, 96 L. ed. 775; *Annotation*, 84 L. ed. 925, 940; *Edelman* v. *California*, 344 U.S. 357, 97 L. ed. 387; *Dixon* v. *Duffy*, 344 U.S. 143, 97 L. ed. 153; *Annotation*, 94 L. ed. 879; (this Court will not pass on constitutional objections to state legislation not necessary to disposal of case) *Alabama State Federation of Labor* v. *McAdory*, 325 U.S. 450, 89 L. ed. 1725; *Rescue Army* v. *Muncipal Court*, 331 U.S. 549, 91 L. ed. 1666; *Toomer* v. *Witsell*, 334 U.S. 385, 92 L. ed. 1460.

Further, consider the necessity of the conservation of this Court's time and attention, as was demonstrated in *Hartford Accident & Indemnity Co.* v. *Delta & Pine Land Co.*, 292 U.S. 143, 78 L. ed. 1178, wherein a Federal question assumed to be exclusive was made the basis of reversing the Supreme Court of Mississippi, but upon remand notwithstanding the prior decision of this Court, this Court dismissed the application for the writ because after the prior decision a local question which was conclusive had been developed. *Hartford Accident & Indemnity Co.* v. *Delta & Pine Land Co.*, 311 U.S. 610, 85 L. ed. 387.

Compare, also *Stembridge* v. *State of Georgia*, 343 U.S. 541, 96 L. ed. 1130; *Radio Station WOW* v. *Johnson*, 326 U.S. 120, 89 L. ed. 2092, 2100, where it is said:

"This brings the situation clearly within the settled rule whereby this Court will not review a State Court

decision resting on an adequate and independent non-Federal ground even though the State court may have also summoned to its support an erroneous view of Federal law.* * *"

See, also, *Williams* v. *Kaiser,* 323 U.S. 471, 89 L. ed. 398; *Holley* v. *Lawrence,* 317 U.S. 518, 87 L. ed. 434; *U.S.* v. *Hastings,* 296 U.S. 188, 80 L. ed. 148; *Fox Film Corporation* v. *Muller,* 296 U.S. 207, 80 L. ed. 158.

So, with deference, Learned Counsel for petitioners completely overlook these factors and especially the fact that this Court with its broad duties may not needlessly consume time in determining a question which, if and when determined, will not confer upon the petitioners any substantial right, in this, that the state Court has ample state grounds upon which it may, and doubtless will, render the Act invalid.

(6). Counsel erroneously say, with deference, that this case involves only the Act and the Fourteenth Amendment; but, with deference, Section 90(1) is the principal character in this drama and, with it deleted, it would be *Hamlet* without the Prince of Denmark. This Court, with deference, takes the case as is, not as petitioners would have it. Excision of local questions is not here permissible for this would destroy completely the state sovereignty which is requisite as to all matters exclusively within the state's jurisdiction.

(7). Petitioners, as they were bound to do, conceded, p. 4:

"* * * The Mississippi Supreme Court held that Senate Bill 1756, of the Mississippi Laws of 1951, under which the bonds were issued, *violated the Mississippi Constitution of 1890* and more especially the equal protection clause of the Fourteenth Amendment to the Federal Constitution."

(8). Petitioners appropriately admit that the respondents, objectors, raised the constitutional questions, as shown

by Petitioners' Appendix "D". The petitioners never once referred to the Federal Constitution and the interpretation made thereof was in virtue of an assignment thereasto by respondents. It is conceded, of course, that Mississippi's Court did refer to in its opinior and assume to follow the decisions of this Court as to the Equal Protection Clause; and, with that Court having thus done, this Court might in virtue thereof take appropriate action. Compare *Great Northern Railway Co.*, v. *Sunburst Oil & Refining Co.*, 287 U.S. 358, 77 L. ed. 360; *Saunders* v. *Shaw*, 244 U.S. 317, 61 L. ed. 1163.

(9). With deference, we deny, p. 4:

> "The Supreme Court of the State of Mississippi denies the power of the legislature to enact a local and public law for local benefit, and to levy a tax on the sale of gasoline in the county to pay off bonds to be issued to pay for said local improvement."

That assumed to be done by the Act has been heretofore shown and there is plenary power in the legislature to conserve and preserve the public welfare when it follows the mandate of *Mississippi's Constitution*, which demands a general law. As above shown, the legislature had plenary power as to special assessments and local taxing districts; and this aspect was not in any wise considered or decided by the Mississippi Court.

(10). With deference, the cases cited by petitioners are wholly inapposite for Mississippi's Court did not do more under 90(1) than to invalidate a *local* act confessedly passed to make of Monroe County and the property therein situsted a separate and distinct entity *quoad* general state sovereignty; and it is respectfully submitted that not one of the many cases sought to be relied upon by petitioners in any way controverts that so accurately determined as to Mississippi's public policy of preventing general laws from

being circumvented by pressure groups operating through a local act. Monroe County was not attempted to be made in any way an improvement district nor did it in any wise lose its county status; but as to it, this local and private Act sought to create general advantages not shared by other counties and, in so doing, fundamentally transgressed Mississippi's policy as to general laws found in Sections 87 through 90, appended hereto as Appendix "E".

(11). Counsel at page 9 admit that the Act requires an ad valorem tax within Monroe County, not as a taxing district but *pari passu* with ad valorem taxation throughout the state which must be equal and uniform, Section 112 thereasto expressly providing:

> "Taxation shall be uniform and equal throughout the state. Property shall be taxed in proportion to its value, * * * ".

Then the gasoline tax is tied into the ad valorem tax, as well as into a disposition of the general revenues of the county accruing from the general sources; and this incongruous admixture was that which Mississippi's Court held *Mississippi's Constitution* prohibited. With deference, opposite counsel have not cited a single case which could thus challenge the conclusion that thereasto a general law should be.

(12). Counsel say, p. 12:

> "The petitioners, therefore, submit that the Supreme Court of Mississippi has reached an obviously erroneous result and that a review should be granted in order that the substantial federal question presented may be correctly determined in accordance with the applicable decisions of this Court."

But, with deference, we deny under the particular statute that an erroneous result has been reached; however, if it has, then the petitioners show no error whatever in the

Court's reasoning as to Section 90(1), and more important still, do not show any of those factors which this Court has found to be so fundamentally requisite to conserve this Court's time, the statement thereasto being in *Rice* v. *Sioux City Cemetery*, 349 U.S. 70, 99 L.ed. 507, 511 (Advance Sheets):

> " • • • In illustrating the character of reasons which may be deemed 'special and important,' the Rule (Rule 19, Supreme Court of the United States) refers to cases.
>
> " 'Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.'
>
> "A federal question raised by a petitioner may be 'of substance' in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants. (Magnum Import Co. v. Coty, 262 US 159, 163, 67 L.ed. 922, 924, 43 S Ct 531; see also Address of Mr. Chief Justice Vinson, before the American Bar Association, Sept. 7, 1949, 69 Sup Ct v, vi; Address of Mr. Chief Justice Hughes, before the American Law Institute, May 10, 1934, XI Proc Am Law Inst 313.) 'Special and important reasons' imply a reach to a problem beyond the academic or the episodic. This is especially true where the issues involved reach constitutional dimensions, for then there comes into play regard for the Court's duty to avoid decision of constitutional issues unless avoidance becomes evasion. Compare the classic rules for such avoidance stated by Mr. Justice Brandeis in Ashwander v. Tennessee Valley Authority, 297 US 288, 341, 80 L.ed. 688, 707, 56 S Ct 466."

III. Supplemental Consideration of Mississippi's Constitution

Mississippi's Court specifically stated that applicable to this question of state constitutionality were Sections 33, 71, 90(h) and 112. These sections have been hereinabove quoted. Dealing specifically therewith, before this Court could effectively reverse Mississippi's decision, it must know that Mississippi's Court will not condemn the Act under these sections. This, with deference, will preclude the granting of certiorari other or further than to remand this cause to Missisippi's Court with a command that Mississippi's Court integrate into this decision its interpretation of

(a) the procedural questions above noted; and
(b) those sections of the Constitution.

But, when and if the reversal is had and Mississippi's Court adheres to its viewpoint as to Section 90(1) and in addition declares the invalidity under the other sections of its *Constitution,* as well as under the procedural defects so patently existent, this Court will be compelled thereafter to affirm, irrespective of its prior decision as to the Due Process and Equal Protection Clauses, just as it did in *Hartford Accident and Indemnity Company* v. *Delta & Pine Land Co., supra,* when the Delta & Pine Land Company had a state decision postdating the Federal decision upon a local issue, which local issue rendered the precedent decision of this Court inapposite and without effect. And surely, with the record as it, this Court does not want to repeat that which then occurred.

Within the ambit of the state *Constitution,* Mississippi's determination is binding on this Court. Compare *Erie R. Co.* v. *Tompkins,* 304 U.S. 64, 82 L.ed. 1188, 114 A.L.R. 1493, and *Re Murchison, supra,* where the Federal Court lost jurisdiction to independent interpretation of local law.

So, if this Court should grant certiorari, it could thus only remand pending a final determination here until Mississippi's Court should answer all of these questions and find that this Act perfectly complied with the *Constitution* and procedure of Mississippi and was perfectly valid, leaving as a sole issue the violation of the Equal Protection Clause.

While we do not speak for Mississippi's Court, with deference, such a directive from this Court would be in violation of the *Constitution of the United States* in that this Court could not, as to these separate and independent questions, in any wise control or dictate the decision of Mississippi's Court. But, if we pass this insuperable obstacle, the petitioners are still confronted with these several sections of the *Constitution of Mississippi* hereinabove cited and pretermitted by the Supreme Court of Mississippi. It is, with deference, submitted that this Act does violate each and all of them.

Compare the authorities whereon we relied in the Supreme Court of Mississippi and hereinabove set forth in Point I (B).

There is, with deference, this further fundamental local constitutional condition, namely, Section 14 of the *Constitution of 1890* first appeared in the same words in the *Constitution of Mississippi* in the *Constitution of 1817*, Article I; Section 10, *Constitution of 1832*, Article I, Section 10; *Constitution of 1869*, Article I, Section 2; as is evidenced by the sources in the *Constitution of 1890*, Section 14. Now while these precise words were thus used in the *Constitution of 1869*, the Supreme Court of Mississippi interpreted them in *Murray* v. *Lehman*, 61 Miss. 283, in the year 1883, as follows (quoting from the opinion herein, 81 So. 2d 234):

> "In Murray v. Lehman, 61 Miss. 283, in discussing the constitutional rule of equality and uniformity of taxation throughout the state, and while recognizing

that the tax involved was not on property, the Court said: 'This rule requires that persons in the same class and property and rights of the same kind shall generally be subjected alike to the same common burden. There must not be local exactions, except for peculiar local advantage' ".

And when the Constitutional Convention of 1890 met, this decision admeasuring the rights under these words was readopted. Thereby under Mississippi law this decision in the *Murray Case* became integrated into our Constitution exactly as if set forth at large. See *Hughes* v. *Gully*, 170 Miss. 425, 153 So. 528; *Griffin* v. *Jones*, 170 Miss. 425, 153 So. 528; *Griffin* v. *Jones*, 170 Miss. 230, 154 So. 551; s.p. *Chicago, R.I. & P.R. Co.* v. *Robertson*, 122 Miss. 417, 84 So. 449; *Bell* v. *Mississippi Orphans Home*, 192 Miss. 205, 5 So. 2d 214; *Mississippi School for Blind* v. *Armstrong*, 216 Miss. 348, 62 So. 2d. 369.

So the Constitutional Convention thus adopted Section 14, with this construction in *Murray* v. *Lehman;* and obviously, where the State alone is involved, it would be quite improper to set aside what Mississippi's Court hereasto has continuously thought since the *Murray Case* was decided. Mississippi's Court would have the right to interpret the words of Section 14 to mean precisely that which they expressed in the *Murray Case.* If it were true—which, with deference, it is not—that this Court had a different concept as to the meaning of the Fourteenth Amendment, the sovereignty of Mississippi in construing these words in Section 14, is with deference, quite adequate to thus admeasure the rights of its local citizens as to a matter of this kind.

Moreover, when Mississippi's Court, as was its right, reserved its decision as to whether or not there had been a violation of Section 33, Section 71, Section 90(h) and

Section 112, with deference, this Court may not coerce Mississippi's Court to pass on each of these several questions involving weighty constitutional propositions. Especially may this not be done when, with deference, Mississippi's Court has seen fit to invalidate the Act expressly and explicitly under Section 90 (1), and was at pains to reserve the conformity propositions because it felt that, in order to conserve Mississippi's public policy as to local laws, it should proscribe this obvious attempt at fraud thereon. With that Court having thus held such violation to exist, this holding must persist as it is quite independent of any question under the Fourteenth Amendment.

Wherefore, it is respectfully submitted that the application should be denied; but, if granted, the questions under the *Mississippi Constitution* should be remitted for decision to the Supreme Court of Mississippi, and it asked to define its position thereon. It is, however, with deference, submitted that such a request would be beyond the power of this Court; and Mississippi's Court having invalidated as to the State an attempted bond issue, with no one hurt and no possibility of damage to accrue therefrom other than to conform to the requirement of the *Constitution of Mississippi* for a general law hereasto, this Court is without jurisdiction and the writ should be denied; but, if jurisdiction be taken, for the reasons indicated the case should forthwith be affirmed. Thus do these respondents respectfully move.

Fred B. Smith,
Ripley, Mississippi.
Richard B. Booth,
Aberdeen, Mississippi.
Garner W. Green,
Jackson, Mississippi.

APPENDIX A

MISSISSIPPI CONSTITUTION

SECTION 170

Each county shall be divided into five districts, a resident freeholder of each district shall be selected, in the manner prescribed by law, and the five so chosen shall constitute the board of supervisors of the county, a majority of whom may transact business. The board of supervisors shall have full jurisdiction over roads, ferries, and bridges, to be exercised in accordance with such regulations as the legislature may prescribe, and perform such other duties as may be required by law; provided, however, that the legislature may have the power to designate certain highways as "state highways," and place such highways under the control and supervision of the state highway commission, for construction and maintenance. The clerk of the chancery court shall be the clerk of the board of supervisors.

APPENDIX B

Chapter 524, LOCAL AND PRIVATE LAWS OF *MISSISSIPPI, 1954* (SENATE BILL 1756)

An Act Authorizing the Board of Supervisors of Monroe County, Mississippi, to Issue Bonds in an Amount Not Exceeding $500,000.00 for the Purpose of Constructing, Reconstructing, and Maintaining the Roads and Bridges of Said County; Prescribing the Form and Terms of Such Bonds; and Providing the Method of Repayment.

Be it Enacted by the Legislature of the State of Mississippi:

Section 1. The board of supervisors of Monroe County, Mississippi, is hereby authorized and empowered, in its dis-

cretion, to issue negotiable bonds of said county in a sum not to exceed five hundred thousand dollars ($500,000.00) to raise funds for the purpose of constructing, reconstructing, and maintaining the roads and bridges of said county. The bridge construction may include a bridge or bridges over a river or stream forming part of the boundary line of Monroe County. The word "bonds" as used in this act shall be deemed to mean and include bonds, notes, or certificates of indebtedness.

Section 2. Before issuing any bonds for any of the purposes herein enumerated, the board of supervisors shall adopt a resolution declaring its intention so to do, stating the amount of bonds proposed to be issued and the purpose for which the bonds are to be issued, and the date upon which the board proposes to direct the issuance of such bonds. Such resolution shall be published once a week for at least three (3) consecutive weeks in at least one newspaper published in such county. The first publication of such resolution shall be made not less than twenty-one (21) days prior to the date fixed in such resolution for the issuance of the bonds, and the last publication shall be made not more than seven (7) days prior to such date. If twenty per cent (20%) of the qualified electors of the county shall file a written protest against the issuance of such bonds on or before the date specified in such resolution, then an election on the question of the issuance of such bonds shall be called and held as is herein provided. If no such protest be filed, then such bonds may be issued, either in whole or in part, without an election on the question of the issuance thereof, at any time within a period of two (2) years after the date specified in the above mentioned resolution; provided, however, that the board of supervisors, in its discretion, may nevertheless call an election on such question, in which event it shall not be necessary to publish

the resolution declaring its intention to issue such bonds as herein provided.

Section 3. Where an election is to be called, as provided in the preceding section, notice of such election shall be signed by the clerk of the board of supervisors and shall be published once a week for at least three (3) consecutive weeks, in at least one newspaper published in such county. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed for such election, and the last publication shall be made not more than seven (7) days prior to such date.

Section 4. Such election shall be held, as far as is practicable, in the same manner as other elections are held in counties. At such election all qualified electors of such county may vote, and the ballots used at such election shall have printed thereon a brief statement of the amount and purpose of the proposed bond issue and the words "For the Bond Issue" and "Against the Bond Issue," and the voter shall vote by placing a cross (X) or check (√) mark opposite his choice on the proposition.

Section 5. When the results of the election on the question of the issuance of such bonds shall have been canvassed by the election commissioners of such county and certified by them to the board of supervisors of such county, it shall the duty of such board of supervisors to determine and adjudicate whether or not three-fifths (3/5) of the qualified electors who voted in such election voted in favor of the issuance of such bonds and, unless three-fifths (3/5) of the qualified electors who voted in such election shall have voted in favor of the issuance of such bonds then such bonds shall not be issued. Should three-fifths (3/5) of the qualified electors who vote in such election vote in favor of the issuance of such bonds, then the board of supervisors of the county may issue such bonds, either in whole or in part, within two (2)

years from the date of such election, or within two (2) years after the final favorable termination of any litigation affecting the issuance of such bonds, as such board shall deem best.

Section 6. All bonds issued pursuant to this act shall mature annually, with all maturities not longer than twenty-five (25) years, with not less than one-fiftieth (1/50) of the total issue to mature each year during the first five (5) years of the life of such bonds, not less than one-twenty-fifth (1/25) of the total issue to mature each year during the succeeding ten-year period of the life of such bonds, and the remainder to be divided into approximately equal annual payments, one payment to mature each year for the remaining life of such bonds. Such bonds shall not bear a greater rate of interest than five per cent (5%) per annum, and the denomination, form, and place or places of payment of such bonds shall be fixed in the resolution or order of the board of supervisors issuing such bonds. Such bonds shall be signed by the president of the board of supervisors, and countersigned by the clerk thereof, with the official seal of the county affixed thereto, but the coupons may bear only the facsimile signatures of such president and clerk. No bonds shall be issued and sold under the provisions of this act for less than par and accrued interest, and not more than one series of interest coupons shall be attached to any bonds issued under the provisions of this act, but all interest accruing on such bonds so issued shall be payable semi-annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one year.

Section 7. The proceeds of any bonds issued by said county shall be placed in the county treasury or depository, if there be one, as a special fund, and shall be used for no other purpose than that for which such bonds were author-

ized to be issued. If the board of supervisors of such county, or any member thereof, or any other officer, shall wilfully divert or aid or assist in diverting any such fund, or any part thereof, to any purpose other than that for which such bonds were authorized to be issued, then such person shall be guilty of a felony and, upon conviction, shall be punished by imprisonment in the state penitentiary for a term not exceeding five (5) years and, in addition, he shall be liable personally and on his official bond for the amount so diverted. Any member of such board of supervisors may escape the penalty provided for above by requesting and having his vote recorded in the negative on any illegal diversion of the proceeds of such bonds.

Section 8. Said bonds, when issued, shall be the direct obligations of said county, and the full faith, credit, and resources of Monroe County shall be irrevocably pledged for the payment thereof. It shall be the duty of the board of supervisors annually to levy upon all taxable property within said county a special tax sufficient to provide for the payment of the interest on said bonds as it accrues and the principal of said bonds as it matures; "provided, however, that if any other funds should be or become available and be appropriated by the board of supervisors for the aforesaid purposes, or if the gasoline tax provided in section 9 of this act should be levied and be appropriated by the board of supervisors for the aforesaid purposes, then and in that event the amount of special taxes to be levied under this section may be correspondingly reduced."

Section 9. An excise tax of not exceeding one cent (1¢) per gallon, in addition to any such tax levied and collected by the state in Monroe County, for the distribution of gasoline, may be collected for the benefit of said county, such collection to be made at the time and in the manner provided for the collection of the gasoline tax generally, and sums received from such tax shall be remitted by the motor

vehicle comptroller to the county at the same time as is remitted the amount due to the county out of the regular gasoline tax. The additional funds so derived shall be applied exclusively to paying interest and principal on said bonds and to provide a sinking fund for retirement of same. The board of supervisors of said county, if desiring to collect said tax, shall enter an order on its minutes levying such tax, shall publish notice of such levy for three (3) weeks in at least one newspaper published in said county, and upon completion of publication shall send a certified copy of such order and proof of publication of such order to the motor vehicle comptroller.

Section 10. The tax or taxes hereby authorized are in addition to any other tax which may now or hereafter be authorized by law. Except as provided in this act, all of the provisions of chapter 241, laws of 1950, as amended, shall apply to any indebtedness incurred or bonds issued under the authority of this act.

Section 11. The board of supervisors is hereby authorized to enter into an agreement with the state highway department for the purpose of providing sufficient funds with which the highway department may do all things necessary toward constructing and reconstructing roads and bridges in accordance with highway department specifications for construction and reconstruction, preparatory to the state highway department taking over said roads and bridges for state maintenance.

Section 12. This act shall take effect and be in force from and after its passage.

APPENDIX C

Constitution of the United States

ARTICLE XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX D

IN THE SUPREME COURT OF MISSISSIPPI

No. 39,819.

ALLEN AIKEN WALKER, ET AL.,

vs.

BOARD OF SUPERVISORS OF MONROE COUNTY, MISSISSIPPI.

McGEHEE, CHIEF JUSTICE:

This is a proceeding to validate $498,600.00 of 1954 Road and Bridge Bonds of Monroe County, Mississippi issued under Senate Bill 1756 approved May 4, 1954 (Chapter 524, Local and Private Laws of 1954), entitled "An Act authorizing the board of supervisors of Monroe County, Mississippi, to issue bonds in an mount not exceeding $500,000.00 for the purpose of constructing, reconstructing, and maintaining the roads and bridges of said county; prescribing

the form and terms of such bonds; and providing the method of repayment."

The authority of the appellants, Allen Aiken Walker and others to have appeared in the Chancery Court to contest the validation of the bonds is not challenged.

While the title of this Act does not so disclose, Section 9 thereof provides that "an excise tax of not exceeding one cent (1) per gallon, in addition to any such tax levied and collected by the State in Monroe County, for the distribution of gasoline, may be collected for the benefit of said county, such collection to be made at the time and in the manner provided for the collection of the gasoline tax generally, and sums received from such tax shall be remitted by the Motor Vehicle Comptroller to the county at the same time as is remitted the amount due to the county out of the regular gasoline tax. The additional funds so derived shall be applied exclusively to paying the interest and principal on said bonds and to provide a sinking fund for retirement of same. The board of supervisors of said county, if desiring to collect said tax, shall enter an order on its minutes levying such tax, * * *."

It is important here to note that there is no provision in the Act about this excise tax not applying to gasoline "purchased and used for agricultural, maritime, industrial or domestic purposes," hereinafter discussed.

On July 13, 1954, the board of supervisors adopted its resolution declaring the intention of the board to issue the said amount of "road and bridge bonds authorized by Senate Bill 1756, Local and Private Laws, 1954, for the purpose of constructing, reconstructing and building roads and bridges of said county, including the bridge or bridges over a river or stream forming part of the boundary line of Monroe County."

This resolution set out the form of notice to the qualified electors of the county, to be published in the local news-

papers for the time required by law, giving notice that on August 7, 1954, the board would direct the issuance of such bonds, for the construction, reconstruction and building of the several road and bridge projects therein set forth, unless twenty per cent of the qualified electors of the county should file their written protest against the issuance of the bonds on or before the 6th day of August, 1954, and in which event an election would be held to determine the question of whether or not such bonds should be issued.

The resolution contained the further provision that "it is not the desire of the board of supervisors for any tax to be imposed on gasoline to include any tax on refund gasoline *sold to farmers*, and that the board intends to seek an amendment to Senate Bill 1756 to that end and purpose." (Italics ours).

Thereafter the Board duly adjudicated on its minutes that 115 petitions containing an estimated 2,385 signatures, being the names of more than twenty per cent of the qualified electors had been filed protesting the issuance of said bonds. Therefore, an election was called on the question, to be held on the 14th day of September, 1954. The notice to the qualified electors of the election recited that "said bond issue is proposed to be financed by an excise tax not exceeding one cent per gallon on gasoline sold in Monroe County, Mississippi, * * * and in the event this excise tax not exceeding one cent a gallon on the gasoline is not sufficient to meet the annual interest and the bonds as they mature annually, a special tax sufficient to provide for the payment of the interest on said bonds and the principal of said bonds shall be levied on all taxable property in Monroe County, Mississippi." Nothing was said in the notice of the election about an exemption from this gasoline tax of gasoline "purchased and used for agricultural, maritime, industrial or domestic purposes." It is stipulated in the

record that the "refund" gasoline tax of one cent per gallon for gasoline purchased and used for said purposes out of the seven cents per gallon levied by the State under general law amounted to:

"Fiscal year, July, 1950 through June, 1951 . . $15,265.03
Fiscal year, July, 1951 through June, 1952 . . $20,433.31
Fiscal year, July, 1952 through June, 1953 . . $19,711.12."

After the election was held on September 14, 1954, and had carried by 52 votes over the required three-fifths majority of those voting in the election, the legislature at its extraordinary session of 1954, by Senate Bill 1222, approved on September 17, 1954, amended Section 9 of Senate Bill 1756 so as to exempt and exclude from the payment of this excise tax in Monroe County all gasoline purchased and used for agricultural, maritime, industrial or domestic purposes. Therefore the subsequent resolutions and orders of the board of supervisors declaring the result of the election and providing for the issuance and sale of the bonds, and prescribing the form of the bonds, undertook to exempt from the excise tax of one cent per gallon on the gasoline sold and distributed in Monroe County such gasoline as was purchased and used for said purposes, contrary to the notice to the qualified electors which has been published prior to the election on September 14, 1954. The trial court held that this was not a material change from the question voted on in the election, although the exemption was to run throughout the life of the bonds, and although the original resolution of the board of supervisors in regard to the proposed issuance of the bonds had stated only that it was not the desire of the board that the excise tax on gasoline should be imposed on "refund" gasoline "sold to farmers", saying nothing about whether or not it was the desire of the board to exempt such gasoline was purchased

and used for industrial, maritime or domestic purposes, and although the notice of the election said nothing about an exemption of any gasoline sold or distributed in the county.

Section 8 of Senate Bill 1756—a purely local or special law—provided that: "Said bonds, when issued, shall be the direct obligations of said county, and the full faith, credit, and resources of Monroe County shall be irrevocably pledged for the payment thereof. It shall be the duty of the board of supervisors annually to levy upon all taxable property within said county a special tax sufficient to provide for the payment of the interest on said bonds as it accrues and the principal of said bonds as it matures; provided, however, that if any other funds should be or become available and be appropriated by the board of supervisors for the aforesaid purposes, or if the gasoline tax provided in Section 9 of this act should be levied and be appropriated by the board of supervisors for the aforesaid purposes, then and in that event the amount of special taxes to be levied under this section may be correspondingly reduced."

Moreover, the resolution or order of the board of supervisors providing for the holding of the election stated that the ballots used in such election shall have printed thereon the following brief statement of the amount and purpose of the proposed bond issue, to-wit: "The issuance of $498,600.00 road and bridge bonds for the purpose of constructing and reconstructing and building the roads and bridges of said county, to be financed by the levy of an excise tax not exceeding 1¢ a gallon on gasoline sold in Monroe County, Mississippi, and by levying upon all taxable property within said county, a special tax sufficient to provide for the payment of interest on said bonds and principal of said bond *in the event of* the excise tax of not exceeding 1¢ per gallon on gasoline *is not sufficient to* meet the annual interest on such bond and such bonds as will mature annually."

The bonds proposed to be validated, the form of which is set out in the order of the board made and entered subsequent to the election providing for the issuance and sale or the bonds, contain a provision on the face of the form of each bond as follows: "This bond and the issue of which it is one constitutes a lien upon all taxable property in Monroe County, Mississippi, and the board of supervisors of Monroe County, Mississippi, shall annually levy a special tax upon all such property sufficient to pay the principal and interest of such bonds as they fall due; provided, however, that if any other funds shall be or become available and be appropriated by the board of supervisors for the aforesaid purposes or if the gasoline tax provided in Section 9 of Senate Bill 1756 of the laws of the State of Mississippi of 1954 as amended, amounting to one cent per gallon on all gasoline in addition to any such tax levied and collected by the State in Monroe County, Mississippi, for the distribution of gasoline, but this tax not to be collected from gasoline purchased and used for agricultural, maritime, industrial or domestic purposes, not used in operating motor vehicles on the public roads, streets and highways of this state, which gasoline being known as refund gasoline and such refund gasoline being entirely excluded and exempt from all provisions in Senate Bill 1756 as amended."

It will be observed that in the above quotation the sentence is incomplete, following the semi-colon therein.

However, the resolution or order of the board contains a provision, immediately following the form of the bond copied therein, to the effect that the full faith, credit, and resources of Monroe County, Mississippi, are hereby irrevocably pledged and said bonds when and as issued shall constitute a lien upon all the taxable property in Monroe County, Mississippi, and the board of supervisors shall annually levy a special tax on all such property *sufficient*

to pay the principal and interest of such bonds as they fall due. And shall annually levy an excise tax of not exceeding one cent per gallon in addition to any such tax levied and collected by the State in Monroe County, Mississippi, for the distribution of gasoline, but exempting that purchased or used for agricultural, maritime, industrial or domestic purposes, whereas the resolutions and order of the board entered prior to the election, including the statement on the ballots used in the election provided that the bonds were to be financed by the excise tax on gasoline, and that *in the event* the same *is not sufficient* to meet the annual interest and ... e bonds as they mature annually, a special (*ad valorem*) tax sufficient to provide for the payment of the interest on the bonds and the principal of said bonds shall be levied on all taxable property in Monroe County, Mississippi.

In other words, according the statement on the ballots used in the election and in the notice of the election, the voters were informed that the excise tax not exceeding one cent a gallon on gasoline sold in Monroe County, was to be the primary source for the payment of the interest and the principal of the bonds, and that the *ad valorem* tax on all of the taxable property of the county was to be levied only in the event this excise tax was not sufficient to meet the annual interest and the payment of the bonds as they mature annually.

It would seem that Section 8 of Senate Bill 1756, and which act was the controlling statute at the time the election was held on September 15, 1954, after pledging the full faith, credit, and resources of Monroe County to the payment of the bonds in question, makes it the mandatory duty of the board of supervisors of said county to levy annually upon all taxable property within said county a special (*ad valorem*) tax sufficient to provide for the pay-

ment of the interest on the bonds as it accrues and the principal of said bonds as it matures; provided, however, that if the gasoline tax provided in Section 9 of the Act should be levied and appropriated by the board of supervisors for the aforesaid purposes, then in that event the amount of special (*ad valorem*) taxes to be levied under that section may be correspondingly reduced. Section 9 of the Act leaves it to the discretion of the board of supervisors to levy an excise tax not exceeding one cent per gallon on gasoline, in addition to any such tax levied and collected by the state in Monroe County for the distribution of gasoline, and that in the event the board of supervisors of said county, "if desiring to collect said tax," may collect the same for the benefit of said county and apply the same exclusively to paying interest and principal on said bonds, after entering an order on its minutes and publishing the same for the time required by said section to that effect.

The excise tax on gasoline is not levied by the legislature, but the making of such a levy is delegated and left to the discretion of the board of supervisors, and this delegation of authority by the legislature is made only to Monroe County, without any attempt to assign in the act a basis for the classification of those engaged in the business of selling or distributing gasoline in that county as distinguished from those engaged in such business in other counties of the state, and without stating any reason for allowing the *ad valorem* taxes in Monroe County to be reduced annually to the extent of the money collected from the excise tax as distinguished from *ad valorem* taxes paid in other counties.

But aside from the foregoing considerations, as to the validation of the proceedings leading up to and including the issuance of the bonds in the matter of what was submitted to the voters in the election and as to what was done

under the authority of Senate Bill 1222, approved on September 17, 1954, following the election on September 14, 1954, and also as to what is sought to be done by making the excise tax the primary source of revenue for the payment of the interest and retiring the principal of the bonds in the light of sections 8 and 9 of Senate Bill 1756, approved on May 4, 1954, we are confronted with the far more serious question of whether or not the Act itself, either as originally passed or as amended on September 17, 1954, by Senate Bill 1222—as a local or special act—can be upheld under the provisions of the State and Federal Constitutions.

In the outset, it may be observed that the only intimation in the original act that Monroe County is not similarly situated with the counties adjacent thereto and throughout the state, is that a bridge sought to be constructed with a part of the proceeds of the bond issue is "over a river or stream forming a part of the boundary line of Monroe County," a reference to which is made in Section 1 of the Act. However, the record discloses that the river referred to likewise forms a part of the boundary line of Clay and Lowndes Counties, and the Act discloses that neither Clay nor Lowndes County is authorized to levy an excise tax on gasoline, either as the primary or secondary source of revenue for building its part of a bridge. Moreover, there are numerous other counties in the State which have rivers forming in whole or in part one of their boundaries and are therefore similarly situated with Monroe County as to this feature of the Act in question. The Big Black River forms in whole or in part the boundary line between Warren and Claiborne Counties, Warren and Hinds Counties, Yazoo and Hinds Counties, Madison and Yazoo Counties, Holmes and Attala Counties, Carroll and Attala Counties, and Webster and Choctaw Counties. And Pearl River does so between Madison and Rankin Counties,

Hinds and Rankin Counties, and Copiah and Simpson Counties.

Moreover, a general law for this purpose is already in existence in Section 8431, Code of 1942, which provides, among other things: "When a bridge shall be necessary over a stream, or any other body of water which divides one county from another, * * * the boards of supervisors of all interested counties to which it may be necessary may join in the agreement for building, repairing and keeping the same; * * *."

It is contended by the appellants that the Act in question is in conflict with Section 90, par. L of the State Constitution, which is in the following language: "The legislature shall not pass local, private or special laws in any of the following enumerated cases, but such matters shall be provided for only by general laws, viz.: * * * (L) Laying out, opening, altering, and working roads and highways; * * *."

Counsel recognize that in the case of *Robertson* v. *Board of Supervisors of Leflore County*, 112 Miss. 54, 72 So. 852, this Court held that Chapter 424, Laws of 1916, providing for the issuance of bonds to pay for the improvement of public roads in Leflore County, does not violate Section 90, par. L of the Constitution, for the reason that it does not provide for " 'laying out, opening, altering and working roads and highways,' but for the raising of revenue with which to pay for the working of roads and highways, * * *." In so holding the Court evidently overlooked Section 7 of Chapter 424, Laws of 1916, which reads as follows:

"The proceeds arising from the issuance and sale of the bonds to be issued, as provided by this act, shall be used exclusively for the improvement of the public roads, out of stone, chert, or a combination of such material with other material, or any material equally durable, and in payment

to contractors or others for work done in improving such roads, and for material necessary therefor, and for engineer's services, and such salaries and wages as may be incidental to such road improvement.

If the foregoing section of that statute in providing that the improvement of the public roads should be out of stone, chert, or a combination of such material with other material, or any material equally durable, and in providing for the "payment to contractors or others for work done in improving such roads, and for material necessary therefor, and for engineer's services, and such salaries and wages as may be incidental to such road improvement" is not "providing" for working roads and highways, then it is inconceivable how Section 90, Par. (L), declaring that "The legislature shall not pass local, private or special laws" providing for "Working roads and highways" could ever be violated by a local or special law.

The case of *Memphis & C. Ry. Co.* v. *Bullen,* 154 Miss. 536, 121 So. 826, relied on by the appellee does, in the opinion on Suggestion of Error, cite the case of *Robertson* v. *Leflore County, supra,* on the question of whether Section 90, Par. (L), of the Constitution was being violated by Chapter 1080, of the Validation Acts of 1926, but the writer of the opinion evidently likewise overlooked Section 7 of Chapter 424, Laws of 1916, and merely based the holding on the one paragraph opinion rendered in the said case of *Robertson* v. *Leflore County.* The Court in the case of *Memphis & C. Ry. Co.* v. *Bullen,* supra, dealt with Chapter 278, Laws of 1926, a general law, and with Chapter 1080 of the Local and Private Laws of 1926, the first of which statutes was a general validation act of the creation of road districts throughout the state and the issuance of bonds thereof, and the latter statute was one to validate the organization of a particular road district in Tishomingo County by a local or special act. The latter statute validated the crea-

tion of the road district, confirming its boundaries, as organized under the provisions of Chapter 277, of the Laws of 1920, which was a general law, and authorized the board of supervisors to issue additional bonds for road purposes "in the manner provided by the general laws of Mississippi" as a continuing district. We do not think that the decision in that case has such application as to be controlling on the issue of whether or not Senate Bill 1756 of the Laws of 1954, as amended, violates Section 90, Par. (L), of the State Constitution. As to the general statute there involved, Chapter 278, Laws of 1926, the first syllabus states that this curative act is held to have validated road district bonds, without regard to constitutionality of law under which they were issued." The act now before us is not a curative act, and is not contended that the $498,600.00 of bonds here involved should be validated without regard to the constitutionality of Senate Bill 1756 of the regular Session of 1954 as amended by Senate Bill 1222 of the Laws of the Extraordinary Session of 1954.

Counsel for appellants contend the decision in the case of *Robertson* v. *Leflore County, supra,* is unsound in that it undertakes to differentiate between the method of working roads and highways, and the means of doing so; that the means is an essential part of the method that the Constitution does not state that the *Method* only of working roads shall not be provided for by local law, but that it provides that the *working* of the roads shall not be so provided for; that the word "provide" is the key word in this constitutional provision, that is, the working of roads can only be provided for by general law; and that the most essential feature in the "providing" for laying out, opening, altering and working roads and highways, is to "provide" the money with which it is to be done. Counsel are supported in this contention by the subsequent case of *Land* v. *Board of Supervisors,* 114 Miss. 341, 75 So. 126, cited in the

Code under Section 90 of the Constitution, which held that a statute providing for additional method of working public roads and for the issuance of bonds therefore, being applicable throughout the state, was not unconstitutional. In the opinion in that case, although the sufficiency of the title of an Act was one of the main points at issue, the Court made an observation which is very pertinent here when it said: "Necessarily to provide additional methods for working public roads it is necessary to provide appropriate means of accomplishing a proper working of public roads. To work public roads it is necessary to provide a scheme of procuring the money necessary as roads cannot be worked without having the necessary labor and materials to work them. If money must be raised, then the methods of raising the money, including the power of taxation and the issue of bonds, would be an appropriate incident to the plan." In that case the Court said: Section 90, Par. (L), is not applicable to this law (Chapter 172, Laws 1916) *because* the law is in no sense a local law, *but applies throughout the state,* * * *." (Italics ours).

In the matter of the issuance of the $498,600.00 bonds in the instant case the original resolution of the board of supervisors stated that they were proceeding under said Senate Bill 1756 and it was provided in the notice set forth in said resolution, and which was ordered to be published, that the proceeds of the bonds were to be used for the construction of two designated bridges, not exceeding a cost to Monroe County of $144,600.00 in one instance and not to exceed $50,000.00 in the other, and for the constructing of a certain road, including "hard surface paving," and for the construction of numerous other roads and bridges, not to exceed in cost the designated sums of money for each project therein set forth. These several projects were enumerated in the original resolution of July 13, 1954, declaring the intention of the board of supervisors to issue the bonds

in the amount above mentioned unless at least twenty per cent of the quailfied electors should protest the issuance thereof for the purposes stated in the resolution, and in which event the election was to be held.

If this did not constitute "providing" for the working of roads and highways, then the issuance of bonds for building school houses, lighting and heating the same, employing teachers to teach the educable children of a school district, and for purchasing school buses and employing drivers to transport children to school would not be to "provide" for the education of school pupils. Nor would raising money for building a church, lighting and heating the same, and engaging the services of a minister of the gospel to preach in the church amount to providing for religious worship. The first step in the matter of providing for the working of roads and highways is the issuance and sale of bonds to provide the funds with which to pay engineers, employ contractors who in turn engage the services of laborers and purchase the necessary materials for the construction of the roads with such portion of the proceeds of the bond issue as is paid to the contractors for the work provided for; such is to provide for the working of the roads and highways.

The provision of the Act in Section 11 authorizes the Board of Supervisors to enter into an agreement with the state highway department for the purpose of providing sufficient funds with which the highway department "may do, all things necessary toward constructing and reconstructing roads and bridges in accordance with highway department specifications for construction and reconstruction, preparatory to the state highway department taking over said roads and bridges for state maintenance." This court has held that a bridge is a link of the road or highway on which it is located. The act, in our opinion, has the effect, for all of the foregoing reasons, of providing for working roads

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and highways by local or special law contrary to Section 90, Par. (L), of our State Constitution.

The Fourteenth Amendment to the Constitution of the United States provides, among other things, that: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state * * *; * * * deny to any person *within its jurisdiction* the equal protection of the laws." (Italics ours).

In 12 Am. Jur., Constitutional Law, Section 469, it is said, among other things: "It has been repeatedly said that the guaranty of the equal protection of the laws means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances, in their lives, liberty, and property, and in pursuit of happiness. It has frequently been stated that 'the equal protection of the laws is a pledge of the protection of equal laws.' One court has added the concept that it means equality of opportunity to all in like circumstances. The guiding principle most often stated by the courts is that this constitutional guaranty requires that all persons shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liability imposed."

Under the requirement of equal protection of the law, it will be noted that the state may not deny to any person "within its jurisdiction" the equal protection of the law. Therefore the appellants and all those similarly situated in the State of Mississippi are within the jurisdiction of this state, and the question is not whether the Act now before us would apply equally to all persons in Monroe County similarly situated with the appellants, but rather whether it denies appellants the protection of the law enjoyed by all other persons similarly situated in the State as a whole, without a basis for classification.

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The only instance of an excise tax being levied on gasoline, in addition to the seven cents per gallon levied by the state, that we now recall is the excise tax on gasoline provided by general law, Chapter 319, Laws of 1924, for the building and maintenance of a seawall by all the counties which touch or join any body of tidewater. That statute applies to all counties similarly situated as a class, and where the tax was deemed necessary "for the protection of the water front from storms, caving banks, overflow and other like dangers."

It is stipulated in the record, in accordance with what is a matter of common knowledge, that prior to the enactment by the legislature of Senate Bill 1756 the only general method of raising and procuring funds for construction, reconstructing and maintaining the roads and bridges of each and every county in the State of Mississippi was by the levy and collection of *ad valorem* taxes on the property within each county, supplemented by the distribution of the portion of the statewide seven cents per gallon gasoline excise tax collected under the provisions of Article 2, Title 40, Chapter 1 of Vol. 7A Recompiled of the Code of 1942 Annotated, and supplemented by each county's pro rata portion of the statewide automobile and truck road and bridge privilege taxes. And it is further stipulated that various other counties of the state have issued and now have outstanding road bonds issued and sold under the general statutes of the state, including Chapter 241, Laws of 1950 (Section 2926-O, *et seq.*, Supplement to Code of 1942), and that such bonds are paid by *ad valorem* taxation. In other words, the Act here in question does not authorize any county other than Monroe County to levy a gasoline tax for the purpose of paying the interest on road bonds and the bonds as they mature.

A serious objection to the Act here in question is that it seeks to adopt a new formula for levying a tax whereby

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the taxing authorities may impose on a small group in a county the primary burden of paying for improvements enjoyed by all of the citizens thereof, contrary to the general policy throughout the state of paying for such improvements by *ad valorem* taxation; that is to say, to inaugurate a special form of a local excise tax on gasoline distributed in one county and which tax is not authorized to be levied in any other county of the state coming within the same classification. No basis for classifying Monroe County in a class to itself is set forth in the Act, and it is stipulated—as to a fact of common knowledge—that various other counties have the problem of paying interest on bonds and in paying bonds at maturity that have been issued for the construction, reconstruction, and building of roads and bridges, under Chapter 241, Laws of 1950, and under prior statutes of which it is amendatory, which is a general law amply providing for the issuance and sale of bonds to be paid off by *ad valorem* taxes, and amply sufficient for the issuance and sale of bonds for the purpose stated in the Act here in question. Then, too, we know that as a matter of state geography there are various other counties in the state where a river forms the boundry line in whole or in part and that Section 8431, Code of 1942, amply provides by general law for the solving of the problem of building a bridge or bridges across a stream which divides one county from another.

If the legislature has the power, within the limitations of the Fourteenth Amendment to the Constitution of the United States wherein it provides that no state shall deny to any person within its jurisdiction the equal protection of the law, to authorize Monroe County to inaugurate a new type of local taxation applicable to that restricted area, such as an excise tax on the distribution of gasoline, without classification of that county being based on proper

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and justifiable distinctions, and to thereby discriminate against local citizens as compared to persons in other counties under the same circumstances and conditions, then it would necessarily follow that the legislature would have the constitutional right to authorize any other county in particular to levy any of the excise taxes for local purposes which are now levied by the state, such as a local income tax, an inheritance tax, soft drink tax, tobacco tax, use tax, and various other excise taxes, under and by virtue of local or special laws, and without any reasonable basis for classifying the particular county for enjoying the benefits of such special local taxation.

Disraeli is quoted as having said that: "To establish a principle is to embalm it." To paraphrase this statement, it may be said that to establish and put into effect a new tax based on a special formula is to perpetuate it in the tax system, whether it is to be applied generally or locally. As a local or special law, the Act is wholly without precedent in this state, but if its constitutional validity should be upheld, then its lack of pride in ancestry will be more than offset by its prospects for more than a scattered few in progeny. To hold that the imposition of this 1¢ per gallon tax on the distribution of gasoline in Monroe County alone, in addition to the 7¢ per gallon gasoline tax levied by the state, is a constitutionally valid precedent, as established under a local or special law in providing for "working the roads and highways" would mean that one county after another could be authorized by local or special law to levy such an additional tax to provide for the working of roads and highways not only in violation of Section 90 (L) of the State Constitution, but also in violation of the equal protection of the law clause of the Fourteenth Amendment to the Constitution of the United States if it is to be done without regard to whether or not

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the authority granted by the legislature to do so is based on any reason or just classification.

It is stated in 11 Am. Jur., Taxation, Section 184, page 245, that: "It seems clear that a statute imposing an excise or privilege tax which is applicable only in some of the political subdivisions of the state, apparently selected without any consideration as to their size, location, or other reasonable differences from the other political subdivisions of the state, is invalid as involving an arbitrary and illegal classification."

It is stated in 12 Am. Jur., Constitutional Law, Section 481, pp. 151 to 156, that: "The general rule is well settled by unanimity of the authorities that a classification to be valid must rest upon material differences between the persons included in it and those excluded and, furthermore, must be based upon substantial distinctions. * * * Therefore, any law that is made applicable to one class of citizens only must be based on some substantial difference between the situation of that class and other individuals to which it does not apply and must rest on some reason on which it can be defended."

It is further stated in this text that: "The precept most often employed states that a classification to be valid must always rest on a difference which bears a fair, substantial, natural, reasonable and just relation to the object, act, or persons in respect to which it is proposed." The rule is similarly stated in 16 C.J.S., Sec. 520, pp. 1044 and 1045.

In *Murray* v. *Lehman,* 61 Miss. 283, in discussing the constitutional rule of equality and uniformity of taxation throughout the state, and while recognizing that the tax involved was not on property, the Court said: "This rule requires that persons in the same class and property and rights of the same kind shall generally be subjected alike

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to the same common burden. There must not be local exactions, except for peculiar local advantage."

In the case of *Adams* v. *Standard Oil Co.*, 97 Miss. 879, 53 So. 692, this Court said: "It is undoubted that the power of the states to make classification of persons and property for the purposes of taxation, as well as for other purposes, is broad; but it is equally true that the mere fact of classification is not sufficient to relieve a statute from the operation of the equality clause. The classification must be based on some reasonable ground, and some real difference which bears a just and proper relation to the object sought to be accomplished."

This Court again subscribed to the principle stated in the foregoing texts when it held in the case of *Ray Toombs, County Prosecuting Attorney,* v. *Sharkey, et al.*, 140 Miss. 676, 107 So. 274, that Chapter 211, Laws of 1924, providing greater compensation for a prosecuting attorney in counties having "assessed valuation of twenty-five million dollars or more," and being "in a levee district where a cotton tax is imposed for levee purposes" than in other counties having the same valuation, constitutes a local law, and violates the Constitution of 1890, Section 90; the classification having no reasonable basis. There were two counties, including that of the appellant, that came within the classification specified by the Act, but the Court held that the classification was not based on a reasonable ground for a classification. We cite this case only to show that the classification must be based on some reasonable ground which distinguishes the county or counties to which it is intended to apply from other counties in the state; that is to say, it must bear some reasonable relation to the problem involved to distinguish the county for special classification.

It is contended that the Act also violates Sections 33,

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71, 90 par. (h), 112, and 170 of the State Constitution, as to which we deem it unnecessary to express an opinion. The Act contains no saving clause to provide that the fact that one section thereof may be held to be unconstitutional will not affect the remaining sections that may not contravene the Constitution. At any rate, the two separate forms of taxation provided for in the Act are so interwoven under the provisions of the Act that we have concluded that since the Act violates Section 90 (L) of the State Constitution and the equal protection of the law clause of the Fourteenth amendment of the Constitution of the United States, the same should be held unconstitutional as a whole; and that therefore the proceeding for the validation of the bonds in question should be dismissed, and that a judgment should be rendered here for the appellants.

Reversed and judgment here for the appellants.

All Justices concur, except Roberds and Kyle, J. J., who took no part.

APPENDIX E

MISSISSIPPI CONSTITUTION

SECTIONS 87-90

(87) No special or local law shall be enacted for the benefit of individuals or corporations, in cases which are or can be provided for by general law, or where the relief sought can be given by any court of this state; nor shall the operation of any general law be suspended by the legislature for the benefit of any individual or private corporation or association, and in all cases where a general law can be made applicable, and would be advantageous, no special law shall be enacted.

(88) The legislature shall pass general laws, under which

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local and private interests shall be provided for and protected, and under which cities and towns may be chartered and their charters amended, and under which corporations may be created, organized, and their acts of incorporation altered; and all such laws shall be subject to repeal or amendment.

(89) There shall be appointed in each house of the legislature a standing committee on local and private legislation; the house committee to consist of seven representatives, and the senate committee of five senators. No local or private bill shall be passed by either house until it shall have been referred to said committee thereof, and shall have been reported back with a recommendation in writing that it do pass, stating affirmatively the reasons therefor, and why the end to be accomplished should not be reached by a general law, or by a proceeding in court; or if the recommendation of the committee be that the bill do not pass, then it shall not pass the house to which it is so reported unless it be voted for by a majority of all members elected thereto. If a bill is passed in conformity to the requirements hereof, other than such as are prohibited in the next section, the courts shall not, because of its local, special, or private nature, refuse to enforce it.

(90) The legislature shall not pass local, private, or special laws in any of the following enumerated cases, but such matters shall be provided for only by general laws, viz.:

(a) Granting divorces;

(b) Changing the names of persons, places, or corporations;

(c) Providing for changes of venue in civil and criminal cases;

(d) Regulating the rate of interest on money;

(e) Concerning the settlement or administration of any estate, or the sale or mortgage of any property, of any in-

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fant, or of a person of unsound mind, or of any deceased person;

(f) The removal of the disability of infancy;

(g) Granting to any person, corporation, or association the right to have any ferry, bridge, road, or fish-trap;

(h) Exemption of property from taxation or from levy or sale;

(i) Providing for the adoption or legitimation of children;

(j) Changing the law of descent and distribution;

(k) Exempting any person from jury, road, or other civil duty (and no person shall be exempted therefrom by force of any local or private law);

(l) Laying out, opening, altering, and working roads and highways;

(m) Vacating any road or highway, town plat, street, alley, or public grounds;

(n) Selecting, drawing, summoning, or empaneling grand or petit juries;

(o) Creating, increasing, or decreasing the fees, salary, or emoluments of any public officer;

(p) Providing for the management or support of any private or common school, incorporating the same, or granting such school any privileges;

(q) Relating to stock laws, water-courses, and fences;

(r) Conferring the power to exercise the right of eminent domain, or granting to any person, corporation, or association the right to lay down railroad tracks or street-car tracks in any other manner than that prescribed by general law;

(s) Regulating the practice of courts of justice;

(t) Providing for the creation of districts for the election of justices of the peace and constables; and

(u) Granting any lands under control of the state to any person or corporation.

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